American SECURITIZATION FORUM®

Statement of:

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Legislative Proposals to Promote Job Creation, Capital Formation, and Market Certainty

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Chairman Garrett, Ranking Member Waters, my name is Tom Deutsch and as the Executive Director of the American Securitization Forum ("ASF")[1], I appreciate the opportunity to testify here today on behalf of the 330 ASF member institutions who originate the collateral, structure the transactions, serve as trustees, trade the bonds, service the loans and invest the capital in the preponderance of residential mortgage- and asset-backed securities ("RMBS" and "ABS," respectively) in the United States that provides the capital markets funding for a significant portion of the Main Street credit made available in America by banks, auto finance companies, student loan originators, credit card companies and small and medium size business lenders.

ASF submits this testimony to express our views relating to Section 939G (Effect of Rule 436(g)) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act" or "Dodd-Frank"). Section 939G of Dodd-Frank required the immediate repeal of Rule 436(g), which became effective on July 22, 2010. Rule 436(g) under the Securities Act of 1933, as amended (the "Securities Act"), exempted nationally recognized statistical rating organizations ("NRSROs") from expert liability under Section 11 of the Securities Act when their ratings appeared in a statutory prospectus.

ASF supports appropriate reforms within the ABS market and we have held extensive dialogues with policymakers during the drafting, and now with the implementation, of Dodd-Frank to help assist with effective and appropriate rulemaking to ensure the continued recovery

[1] The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

of a vibrant securitization market, which ultimately benefits consumers, businesses and the real economy.

This testimony seeks to address key concerns in the below outline:

I. Role and Importance of Securitization in the Financial System and U.S. Economy
II. The Repeal of Rule 436(g)
    a. Regulatory and Legislative History of Rule 436(g)
    b. Implications of the Repeal of Rule 436(g) on the Securitization Market
    c. ASF Proposed Solutions to These Implications
        i. Amend Regulation AB to Eliminate Required Ratings Inclusion
        ii. Legislation to Repeal the Repeal of Rule 436(g)
III. The FDIC's Orderly Liquidation Authority
    a. Intent to Harmonize Dodd-Frank with the Bankruptcy Code
    b. Preferential Transfer Issue
        i. Consequences of the Inconsistency for Consumer and Commercial Credit Industries
        ii. FDIC's General Counsel Letter I
    c. Repudiation Power Issue
        i. FDIC's General Counsel Letter II
IV. Conclusion

At the outset, let me emphasize that ASF agrees with the goal of reducing overreliance on credit ratings and addressing flaws in the ratings process. We support sensible efforts to ensure that credit ratings are developed and used appropriately. However, as this testimony will outline, we share many of the concerns expressed by market participants, both before and after the enactment of the Dodd-Frank Act, as to the wisdom and efficacy of the repeal of Rule 436(g) by the Dodd-Frank Act as required by Section 939G.

In an October, 2009 release by the Securities and Exchange Commission ("SEC") seeking input on the advisability of repealing Rule 436(g), the SEC's first question for commenters to respond to was, "If we were to subject all credit rating agencies to Sections 7 and 11 of the Securities Act by rescinding Rule 436(g), would registrants be able to obtain the consent required to use ratings in connection with registered offerings of rated securities?"[2] A number of commenters to this proposal indicated that consent would be extremely difficult to obtain. On July 22, 2010, the day after Dodd-Frank was passed and the day the repeal of Rule 436(g) went into effect, this question received an answer grounded in reality—NRSROs did not consent to including their ratings in prospectuses. Since SEC rules require inclusion of ratings in ABS prospectuses and issuers were unable to include ratings in their prospectuses, the entire securitization market shut down. Immediately, issuers of all forms of asset-backed securitizations began scrambling to determine how they would be able to continue capital markets financing of their lending to consumers and businesses.

Fortunately, the staff of the SEC patched up this shutdown late in the day on July 22, 2010 by granting a six month no-action relief for registered offerings of ABS, which was set to expire on January 23, 2011 ("July Letter"). Given the looming shutdown of the ABS markets when the July Letter was expected to expire, ASF sought and the SEC issued on November 23, 2010 (the "436(g) no-action letter")[3] an extension of the no-action letter until further notice.

The ASF applauds the staff of the SEC for their decision to issue the no-action letter to help keep open the critically important securitization markets, but we believe a permanent solution is needed to ensure the long-term viability of the U.S. public securitization markets. In particular, we cautiously note that the language of the current 436(g) no-action letter provides no ongoing certainty as to a permanent SEC policy, as the letter is effective only "until further notice."

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[2] 17 CFR Part 220, page 22.

[3] The SEC's no-action letter dated November 23, 2010 is available at http://www.sec.gov/divisions/corpfin/cf-noaction/2010/ford072210-1120.htm.

Ultimately, ASF believes that the appropriate action is a legislative fix to permanently remedy the issue so as to avoid the potential long-term shutdown of the public securitization market in light of the market uncertainty this issue continues to cause for the industry. This issue is of great concern, not only to the securitization market, but to the credit markets generally, and to consumers in particular. If such a permanent remedy does not ultimately occur, consumers and businesses may ultimately face a more constricted credit market, resulting in fewer financing options and higher costs.

I. Role and Importance of Securitization in the Financial System and U.S. Economy

Securitization—generally speaking, the process of pooling and financing consumer and business assets in the capital markets by issuing securities, the payment on which depends primarily on the performance of those underlying assets—plays an essential role in the financial system and the broader U.S. economy. Over the past 40 years, securitization has grown from a relatively small and unknown segment of the financial markets to a mainstream source of credit and financing for individuals and businesses alike.

In the past, securitization has been a significant source of consumer and residential mortgage lending in the United States and, while down from its peak levels, as of June 2009, out of $18 trillion worth of real estate loans and consumer credit, nearly 19% was funded through private-label securitization.[4] As evidenced by such programs as The Federal Reserve Bank of New York's Term Asset-Backed Securities Loan Facility, there is clear recognition of the importance of the securitization process and the access to financing that it provides lenders, and

[4] Navigating the Financial Challenges Ahead, Global Financial Stability Report, World Economic and Financial Surveys, International Monetary Fund (Oct. 2009), 78.

of its importance to the availability of credit that ultimately flows to consumers, businesses and the real economy.

In recent years, the role that securitization has assumed in providing both consumers and businesses with credit has been striking: currently, there are over $11 trillion of outstanding securitized assets, including RMBS, ABS and asset-backed commercial paper ("ABCP"). This represents a market substantially larger than the normal size of all outstanding marketable U.S. Treasury securities—bonds, bills, notes, and TIPS combined.[5] Between 1990 and 2006, issuance of MBS grew at an annually compounded rate of 13%, from $259 billion to $2 trillion a year.[6] In the same time period, issuance of ABS secured by auto loans, credit cards, home equity loans, equipment loans, student loans and other assets, grew from $43 billion to $753 billion. In 2006, just before the downturn, nearly $2.9 trillion in RMBS and ABS were issued. As these data demonstrate, securitization is clearly a critical sector of today's financial markets.

The importance of securitization becomes more evident by observing the significant proportion of consumer credit it has financed in the U.S. It is estimated that securitization has funded between 30% and 75% of lending in various markets, including an estimated 64% of outstanding home mortgages.[7] Securitization plays a critical role in non-mortgage consumer credit as well. Historically, banks have securitized 50-60% of their credit card assets.[8] Meanwhile, in the auto industry, approximately 91% of auto industry sales are financed through

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[5] U.S. Department of the Treasury, "Monthly Statement of the Public Debt of the United States: January 31, 2011," (January 2011). <http://www.treasurydirect.gov/govt/reports/pd/mspd/2011/opds012011.pdf>.
[6] National Economic Research Associates, Inc. ("NERA"), "Study of the Impact of Securitization on Consumers, Investors, Financial Institutions and the Capital Markets," pg. 16 (June 2009). <http://www.americansecuritization.com/uploadedFiles/ASF_NERA_Report.pdf> (the "NERA Study")
[7] Fitch Ratings, "U.S. Housing Reform Proposal FAQs: Filling the Void" pg. 1-2 (Feb. 2011). <http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=606315> (free registration required).
[8] Citigroup, "Does the World Need Securitization?" pg. 10 (Dec. 2008). <http://www.americansecuritization.com/uploadedFiles/Citi121208_restart_securitization.pdf>.

auto ABS.[9] Overall, recent data collected by the Federal Reserve Board show that securitization has provided over 25% of all outstanding U.S. consumer credit.[10] Securitization also provides an important source of commercial mortgage loan financing throughout the U.S., through the issuance of commercial mortgage-backed securities ("CMBS").

Simply put, the absence of a properly functioning securitization market, and the funding and liquidity this market has historically provided, adversely impacts consumers, businesses, financial markets and the broader economy. The recovery and restoration of confidence in securitization is therefore a necessary ingredient for economic growth to resume, and for that growth to continue on a sustained basis into the future. ASF is supportive of efforts to increase measured and appropriate reforms to the ratings process, but we believe policymakers must carefully balance any measures that aim to revise regulations around the use of credit ratings in ABS with the potential for unintended consequences, should these measures impede market recovery and further constrain the availability of credit.

Over the years, securitization has grown in large measure because of the benefits and value it delivers to transaction participants and to the financial system. Among these benefits and value are the following:

A. *Efficiency and Cost of Financing.* By linking financing terms to the performance of a discrete asset or pool of assets, rather than to the future profitability or claims-paying potential of an operating company, securitization often provides a cheaper and more efficient form of financing than other types of equity or debt financing.

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[9] Ibid., pg. 10.
[10] Federal Reserve Board of Governors, "G19: Consumer Credit," (Sept. 2009). <http://www.federalreserve.gov/releases/g19/current/g19.htm>.

B. *Incremental Credit Creation.* By enabling capital to be raised via securitization, lenders can obtain additional funding from the capital markets that can be used to support incremental credit creation. In contrast, loans that are made and held in a financial institution's portfolio occupy that capital until the loans are repaid.

C. *Credit Cost Reduction.* The economic efficiencies and increased liquidity available from securitization can serve to lower the cost of credit to consumers and businesses. Several academic studies have demonstrated this result. A recent study by National Economic Research Associates, Inc., concluded that securitization lowers the cost of consumer credit, reducing yield spreads across a range of products including residential mortgages, credit card receivables and automobile loans.[11]

D. *Liquidity Creation.* Securitization often offers issuers an alternative and cheaper form of financing than is available from traditional bank lending, or debt or equity financing. As a result, securitization serves as an alternative and complementary form of liquidity creation within the capital markets and primary lending markets.

E. *Risk Transfer.* Securitization allows entities that originate credit risk to transfer that risk throughout the financial markets to parties willing to assume it, such as institutional investors and hedge funds.[12]

F. *Customized Financing and Investment Products.* Securitization allows for precise and customized creation of financing and investment products tailored to the specific needs of both issuers and investors. For example, issuers can tailor securitization structures to meet their capital needs and preferences and diversify their sources of financing and

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[11] NERA Study, pg. 16. <http://www.americansecuritization.com/uploadedFiles/ASF_NERA_Report.pdf>.
[12] The vast majority of investors in the securitization market are institutional investors, including banks, insurance companies, mutual funds, money market funds, pension funds, hedge funds and other large pools of capital.

liquidity. Investors can tailor securitized products to meet their specific credit, duration, diversification and other investment objectives.

Recognizing these and other benefits, policymakers globally have taken steps to help encourage and facilitate the recovery of securitization activity. The G-7 finance ministers, representing the world's largest economies, declared that "the current situation calls for urgent and exceptional action…to restart the secondary markets for mortgages and other securitized assets."[13] The Department of the Treasury stated in March, 2009, that "while the intricacies of secondary markets and securitization…may be complex, these loans account for almost half of the credit going to Main Street,"[14] underscoring the critical nature of securitization in today's economy. The current Chairman of the Federal Reserve Board noted that securitization "provides originators much wider sources of funding than they could obtain through conventional sources, such as retail deposits" and also that "it substantially reduces the originator's exposure to interest rate, credit, prepayment, and other risks."[15] Echoing that statement, the International Monetary Fund (IMF) noted in its *Global Financial Stability Report* that "restarting private-label securitization markets, especially in the United States, is critical to limiting the fallout from the credit crisis and to the withdrawal of central bank and government interventions,"[16] while the Financial Stability Oversight Council in its recent study on *Macroeconomic Effects of Risk Retention Requirements* stated that, "[b]y providing access to the

[13] G-7 Finance Ministers and Central Bank Governors Plan of Action (Oct. 10, 2008). <http://www.treas.gov/press/releases/hp1195.htm>.
[14] U.S. Department of the Treasury, "Road to Stability: Consumer & Business Lending Initiative," (March 2009). <http://www.financialstability.gov/roadtostability/lendinginitiative.html>.
[15] Bernanke, Ben S., "Speech at the UC Berkeley/UCLA Symposium: The Mortgage Meltdown, the Economy, and Public Policy, Berkeley, California." *Board of Governors of the Federal Reserve System* (Oct. 2008). <http://www.federalreserve.gov/newsevents/speech/bernanke20081031a.htm>.
[16] International Monetary Fund, "Restarting Securitization Markets: Policy Proposals and Pitfalls." *Global Financial Stability Report: Navigating the Financial Challenges Ahead* (Oct. 2009), pg.33. <http://www.imf.org/external/pubs/ft/gfsr/2009/02/pdf/text.pdf>.

capital markets, securitization has improved the availability and affordability of credit to a diverse group of businesses, consumers, and homeowners in the United States." There is clear recognition in the official sector of the importance of the securitization process and the access to financing that it provides lenders as well as its importance in providing credit that ultimately flows to consumers, businesses and the real economy.

Restoration of function and confidence to the securitization markets is a particularly urgent need, in light of capital and liquidity constraints currently confronting financial institutions and markets globally. As mentioned above, nearly $11 trillion in U.S. assets are funded at present via securitization. With the process of bank de-leveraging and balance sheet reduction still underway, and with increased bank capital requirements on the horizon, such as those expected in Basel III, the funding capacity provided by securitization cannot be replaced with deposit-based financing alone in the current or foreseeable economic environment. In fact, the IMF estimated that a financing "gap" of $440 billion existed between total U.S. credit capacity available for the nonfinancial sector and U.S. total credit demand from that sector for the year 2009.[17] Moreover, non-bank finance companies, which have played an important role in providing financing to consumers and small businesses, are particularly reliant on securitization to fund their lending activities, because they do not have access to deposit-based funding. Small businesses, which employ approximately 50% of the nation's workforce, depend on securitization to supply credit that is used to pay employees, finance inventory and investment, and fulfill other business purposes. Furthermore, many jobs are made possible by securitization. For example, a lack of financing for mortgages hampers the housing

[17] International Monetary Fund, "The Road to Recovery." *Global Financial Stability Report: Navigating the Financial Challenges Ahead* (Oct. 2009), pg. 29. <http://www.imf.org/external/pubs/ft/gfsr/2009/02/pdf/text.pdf>.

industry; likewise, constriction of trade receivable financing can adversely affect employment opportunities in the manufacturing sector. To jump start the engine of growth and jobs, a robust securitization sector is needed to help restore credit availability.

II. The Repeal of Rule 436(g)

a. Regulatory and Legislative History of Rule 436(g)

Rule 436(g) of the Securities Act is often referred to as the NRSRO expert exemption because its effect is to exempt NRSROs from liability as experts for their ratings under Section 11 of the Securities Act. Section 939G of the Dodd-Frank Act provides that "Rule 436(g) promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect" (the "Repeal of Rule 436(g)").

If the ratings of registered ABS are a condition to the issuance or sale of such ABS, Item 1103(a)(9) and Item 1120 of Regulation AB ("Reg AB")[18] require disclosure in the statutory prospectuses of the minimum rating required and the identity of each rating agency issuing the ratings (regardless of whether the entity is an NRSRO).[19] Currently, investors expect that the ABS they purchase from underwriters will have specific ratings. For most senior investors, their investment guidelines require certain investment grade ratings to be available before that investor may purchase a particular security. For this reason, ABS underwriting agreements (pursuant to which the underwriters commit to purchase the ABS from the issuer (or the depositor)) have, as a closing condition, the receipt of evidence that the rating agencies have assigned specific ratings. As a result, under Regulation AB, ABS issuers must disclose in the statutory prospectus the ratings that are a condition to the issuance or sale of the ABS and the identity of the rating

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[18] 17 C.F.R. §§229.1100 - 229.1123.
[19] See Item 1103(a)(9) and Item 1120 of Regulation AB.

agency issuing the rating. In addition, in response to comments received from SEC staff during the review process, certain issuers using shelf registration statements include a statement to the effect that the ABS must be rated investment grade at the time of issuance.

Rule 436(g) specifically provided that credit ratings issued by NRSROs (but not other credit rating agencies) on debt securities, convertible debt securities and preferred stock were *not* considered part of the registration statement prepared or certified by a person within the meaning of Sections 7 and 11 of the Securities Act. Section 7 of the Securities Act requires any accountant or person whose profession gives authority to a statement made by him (often referred to as an "expert") who is named as having prepared or certified any part of the registration statement, or who is named as having prepared or certified a report for use in connection with the registration, to file a written consent with the registration statement. Because Rule 436(g) specifically provided that ratings issued by NRSROs were not considered part of the registration statement prepared or certified by a person within the meaning of Section 7, prior to the repeal of Rule 436(g), NRSROs were specifically exempt from the Section 7 requirement to file a written consent.

Because NRSROs did not file consents as experts, they were not subject to the strict liability under Section 11 of the Securities Act for the ratings included in a registration statement. Section 11 imposes liability *over and above* that which would apply under common law or under Rule 10b-5 of the Securities Exchange Act of 1934, as amended, on those who are involved in the preparation of the registration statement. Section 11 of the Securities Act applies to any person that signs the registration statement, directors of the issuer, underwriters and "experts" who have been named in the registration statement as having prepared or certified any part of the registration statement or any report or valuation used in connection with the registration statement that provided their consent for filing with a registration statement. Therefore, although Item 1103(a)(9) and Item 1120 of Regulation AB require disclosure of the ratings that are a condition to the sale or issuance of the ABS and the identity of the rating agency (and, in some cases, the issuer agreed to disclose that the ABS must be rated investment grade at the time of issuance), Rule 436(g) specifically exempted NRSROs from the consent requirement under Section 7 of the Securities Act. This, in turn, meant NRSROs were not subject to Section 11 of the Securities Act, which imposes civil liability on experts providing a consent for filing with a registration statement.

b. Implications of the Repeal of Rule 436(g) on the Securitization Market

We note that while many believe that registrants would be able to comply with the disclosure requirements of Items 1103(a)(9) and 1120 without triggering the Section 7 consent requirement, from the time of enactment of Dodd-Frank last year, no ABS public market participant was comfortable from a legal standpoint moving forward on this basis until provided with guidance from the SEC in the form of a no-action letter.[20] Given the uncertainty with

[20] Many members of the ASF believe that the disclosure required under Item 1103(a)(9) and Item 1120 of Regulation AB does not trigger a requirement to file a consent, consistent with the SEC's statements in its October 2009 concept release on the proposed rescission of Rule 436(g) (available at http://www.sec.gov/rules/concept/2009/33-9071fr.pdf and http://www.sec.gov/rules/concept/2009/33-9071afr.pdf). In that release and the companion release on disclosure of credit ratings (available at http://www.sec.gov/rules/proposed/2009/33-9070fr.pdf and http://www.sec.gov/rules/proposed/2009/33-9070afr.pdf) the SEC said that the proposed disclosure requirement and regarding credit ratings "would not be triggered if the only disclosure … is related to … the terms of agreements that refer to credit ratings…" and that the SEC "preliminarily believe[d] that a consent would not be required for such disclosure." This statement would appear to cover reference to an underwriting agreement that has a closing condition that the securities receive a minimum rating from an identified rating agency required under Item 1103(a)(9) and Item 1120 of Regulation AB.

Additionally, we note that because the required disclosure only includes the minimum required rating (and in some cases, a statement that the securities must be rated investment grade) and *not* the rating itself, Section 7 of the Securities Act is not implicated under the SEC's own position that "[t]he consent requirement in Securities Act Section 7(a) applies only when a report, valuation or opinion of an expert is *included or summarized* in the registration statement and attributed to the third party and thus becomes 'expertised' disclosure for purposes of Securities Act Section 11(a), with resultant Section 11 liability for the expert…." (emphasis added). See SEC respect to the applicability of the Section 7 consent requirement, with the repeal of Rule 436(g) under the Securities Act, if and when the SEC staff issues guidance contrary to the current 436(g) no-action letter, public issuance of ABS would again shut down unless issuers obtain the consent of the NRSROs rating the securities. Several of the NRSROs continue to study this matter but have expressed concern with the scope and magnitude of Section 11 strict liability attached to their being considered an "expert." Section 11 liability is considered "strict," which would create potential enterprise liability for any NRSRO, given that the damages could be so significant. Moreover, a rating is a forward looking assessment of expected performance that could be construed or litigated as an expert 'prediction' or 'estimation' of performance. In ABS transactions, the Section 11 liability that attaches to issuers and underwriters is grounded in historical information and facts that are verifiable (and hence not 'predictions' of what may occur in the future). This concern is consistent with comments previously made by the NRSROs to the SEC in connection with proposals that would have subjected NRSROs to the consent requirement, and therefore, increased liability.

For the most part, credit ratings perform an invaluable role in our financial system. They allow investors to sort the universe of potential debt investments into categories of relative riskiness and allow a starting point from which investors can more efficiently perform their own level of due diligence. Without ratings, the markets would lose an effective sorting devise, investors would not have a point of origin for their own due diligence, and disorder would likely result. Redundant replication would replace specialization, and impede the efficiency of capital

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Compliance and Disclosure Interpretations, Question 141.02. The condition to issuance or the ratings requirement is just that, a condition or a requirement, not the inclusion or summary of a report of an expert, not even the attribution of a statement to an "expert."

markets operations, which in turn would slow the formation and reduce the flow of credit into our economy. Again, credit ratings should not be the only source of information, but instead should be one of a number of inputs into an overall assessment of value.

In fact, other provisions in Dodd-Frank require investors to be less reliant on the ratings agencies and to engage in greater independent analysis. But this is like requiring a person to wear belts and suspenders, while knowing the very act of requiring both results in there being no pants to wear, as we saw in the disappearance of the offering of ABS in July, 2010.

Given these concerns, it appears most, if not all, of the NRSROs would not be in a position to provide the written consent arguably required by Section 7 in the case where the SEC staff were to no longer provide the current 436(g) no-action relief. Additionally, if the SEC staff were to issue guidance to effectively eliminate the current relief, any transition period afforded the NRSROs may not provide the NRSROs sufficient time to adjust to the new environment by creating and implementing policies and procedures relating to their issuance of consents, including the planning and execution of the "reasonable investigation" contemplated by Section 11(b)(3)(B) of the Securities Act or the installation of related internal supervisory controls. Moreover, it is unclear at this time if, regardless of the length of any implementation period, any NRSRO would agree to provide a written consent for filing with a registration statement given the associated liability of their statements. Instead, one or more NRSROs may elect to cease rating publicly issued ABS. Given the investor demands in the ABS market for ratings on ABS (and the current requirement that the ABS be rated investment grade to be offered on a shelf registration basis), we believe this would likely bring the public ABS markets to a standstill at any moment if the SEC staff were to eliminate the relief provided by the current 436(g) no-action letter. The ASF actively supports the effort to create a sustainable securitization market and believes the intersection of the Repeal of Rule 436(g) and a renewed enforcement of Item 1103(a)(9) and Item 1120 of Regulation AB would result in a market paralysis, similar to the one that occurred in the initial days after passage of the Dodd-Frank Act, that is damaging to market participants, investors and consumers alike.

c. ASF Proposed Solutions to These Implications

i. Amend Regulation AB to Eliminate Required Ratings Inclusion

One potential permanent solution to this situation is that Item 1103(a)(9) and Item 1120 of Reg AB could be amended to be accompanied by an instruction that the specific ratings and rating agencies are not required to be disclosed in statutory prospectuses and that no consent of the rating agency is required in these circumstances. In fact, in testimony question and answer last week before a House Government Oversight and Reform Subcommittee hearing, the Chairman of the SEC, Mary Shapiro, indicated that the SEC "staff is working through a reconsideration of our disclosure requirements [for ABS], and I believe that they will recommend that we eliminate our pre-existing requirement for including the ratings, and therefore the liability provisions can go forward."

ii. Legislation to Repeal the Repeal of Rule 436(g)

Although we endorse this potential solution to amend Reg AB, we emphasize our membership's continued preference for a legislative fix to repeal the repeal of Rule 436(g) as the best policy for eliminating the unwanted effects of Dodd-Frank Section 939G. If ratings are to be conveyed to investors, issuers should have the ability to convey these ratings to investors as part of the primary, comprehensive offering documents (statutory prospectuses), rather than through assorted ancillary communications such as free writing prospectuses. Moreover, a regulatory fix, such as the foregoing proposal, would impose an additional burden on the SEC to pursue its regulatory authority in order to negate the harmful effects of this Section of the legislation, at a time when the SEC is already inundated with the task of undertaking the large-scale rulemakings required by Dodd-Frank. In contrast, at a critical time for consumers, businesses and the U.S. economy, we believe that an act by Congress to repeal this Section would provide the most straightforward and effective way to remove a key barrier that remains to resuming the normal flow of credit in America.

III. The FDIC's Orderly Liquidation Authority

In December of 2010, two other issues emerged under Dodd-Frank that also threatened the viability of the non-bank sectors of the securitization market. Title II of Dodd-Frank sets forth the Orderly Liquidation Authority ("OLA") of the Federal Deposit Insurance Corporation ("FDIC") through which the FDIC can exercise certain powers in the event that a "covered financial company" (a "Covered Financial Company")[21] enters receivership. A Covered Financial Company is a nonbank that is primarily engaged in financial activity and upon its failure would have serious adverse effects on the financial stability of the United States.

The Dodd-Frank Act requires the FDIC to implement OLA and, to the extent possible, to harmonize its rules with the insolvency laws that would otherwise apply. To date, two separate issues have been identified and pursued by market participants and each required immediate attention by the FDIC to prevent further damage to the already fragile securitization markets. The first issue involves securitizations of Covered Financial Companies where the perfection of the security interest on the underlying paper was accomplished by a Uniform Commercial Code (the "UCC") filing, which generally occurs for auto and student loan securitizations, rather than by possession. In such a case, the FDIC under OLA could arguably trump the securitization's lien on the underlying auto or student loans and leave the investors in the securitization unsecured. The second issue involves the scope of the repudiation power that could be exercised

[21] The Orderly Liquidation Authority ("OLA") provisions of Dodd-Frank allow for the FDIC to be appointed as the liquidating receiver of a "covered financial company." A "covered financial company" subject to these provisions:

- is not an insured depository institution,
- is primarily engaged in activities that are financial in nature and the consolidated revenues of such company from such activities are 85% or more of its consolidated revenues; and
- is in default or in danger of being in default, and, among other things, "the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States" (a "Systemic Risk Determination").

by the FDIC as receiver for a Covered Financial Company under OLA. Our membership very much appreciated the FDIC's General Counsel taking immediate steps to also 'patch' these issues in part, although considerable uncertainty remains without a legislative solution.

Congress has required through Dodd-Frank that the FDIC harmonize applicable rules and regulations promulgated under OLA with the insolvency and bankruptcy laws that would otherwise apply. Despite clarity in the legislative intent, ambiguity in the statutory language of Title II has caused substantial consternation and uncertainty in the securitization markets and has required prompt interpretive actions from the FDIC, at a time when the FDIC is already inundated with the task of undertaking the numerous large-scale rulemakings required by Dodd-Frank. For these reasons, market participants may be forced to plan transactions based on two different insolvency regimes given that they would not know, at the time of extending credit, whether OLA rules or bankruptcy rules would ultimately apply. To provide much needed certainty, and to ensure that the intent of the OLA provisions under Dodd-Frank are carried out, we believe that a legislative solution is necessary and we stand ready to endorse a bill that requires the OLA provisions to be exercised consistent with the U.S. Bankruptcy Code or other applicable insolvency laws, including bankruptcy- and State-law principles governing legal isolation.

a. **Intent to Harmonize Dodd-Frank with the Bankruptcy Code**

In enacting OLA, Congress intended to create a new statutory regime for the orderly liquidation of Covered Financial Companies. However, several sources, including the Dodd-Frank Act itself, suggest that Congress also intended for the resulting statutory regime to operate in such a way as to minimize the likelihood of different results to creditors of such potential Covered Financial Companies from those results arising under Title 11 of the United States Code (the "Bankruptcy Code").

Sections 210(a)(7)(B) and (d)(2)(B) of the Dodd-Frank Act, provide that, in the context of OLA liquidation, "a creditor shall, in no event, receive less than the amount that creditor is entitled to receive" if the FDIC "had not been appointed receiver with respect to [a] covered financial company; and the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code." Furthermore, Section 209 of the Dodd-Frank Act mandates that the FDIC "seek to harmonize applicable rules and regulations promulgated under [OLA] with the insolvency laws that would otherwise apply to a covered financial company." In the Notice of Proposed Rulemaking issued by the FDIC with respect to OLA[22], the FDIC states that "[t]he liquidation rules of [OLA] are designed to create parity in the treatment of creditors with the Bankruptcy Code" and that "the provisions that empower the FDIC to avoid and recover fraudulent transfers, preferential transfers and unauthorized transfers of property by the covered financial company are drawn from Bankruptcy Code provisions."

The underlying policy rationale behind this desire for harmonization is likely that Congress wanted to avoid requiring parties extending credit to potential Covered Financial Companies to be forced to plan transactions based on two different insolvency regimes given that they would not know, at the time of extending credit, which regime would ultimately apply as what constitutes a Covered Financial Company is, at least at this point, a moving target that is determined at the time of receivership. And even if "covered financial company" is strictly

[22] See http://www.fdic.gov/regulations/laws/federal/2010/10propose1019.pdf.

defined, companies may still never be able to feel comfortable making a predetermination as to their status with respect to a potential future receivership.

If a creditor faces the possibility of two different insolvency regimes, it will have to structure transactions to comply with both. Doing so will raise transaction costs and ultimately raise the costs and lower the availability of credit. Raising the costs and reducing the availability of credit are especially problematic if the rules under OLA producing a different outcome than under bankruptcy law cannot be justified on the grounds that they provide important benefits in controlling systemic risk. In other words, a company may have to plan on being considered a Covered Financial Company even though they may ultimately not be determined to be systemically important. Moreover, a small company that has no reasonable basis for concluding it is a Covered Financial Company may ultimately be acquired by a Covered Financial Company and hence now subject to OLA.

b. **Preferential Transfer Issue**

This past December, ASF became aware of an interpretive issue under Section 210(a)(11) of the Dodd-Frank Act relating to the power of the FDIC to avoid preferential transfers. The issue primarily affects the U.S. consumer finance and commercial credit industries and relates to the interpretation of several inconsistent provisions of the Dodd-Frank Act, although the legislative intent of these provisions appears to be clear. Generally, OLA could be interpreted to give the FDIC, as receiver for a Covered Financial Company, broader powers to avoid certain previously perfected security interests than a trustee (a "Bankruptcy Trustee") under the Bankruptcy Code would have upon a Chapter 7 liquidation of the same Covered Financial

Company. As an example, if a Covered Financial Company securitized chattel paper, such as auto loans, and did not deliver the paper to a custodian for the securitization but instead relied on UCC filings for perfection, the FDIC could potentially trump the securitization's lien on the underlying paper and leave the investors in the securitization unsecured. This result would not occur under the Bankruptcy Code. To eliminate the ambiguity in a manner consistent with the legislative intent, ASF suggested in a December 13th letter to the FDIC that these "preference provisions" would benefit from additional rulemaking by the FDIC, or by the issuance of further guidance in the form of a "policy statement" or other release on which the affected industries could rely.[23]

In the letter, we identified an inconsistency in the drafting of the preference provisions of Section 210(a)(11) of the Dodd-Frank Act, which, if read in a certain way, would create a disparity between the treatment of creditors of potential Covered Financial Companies under the Bankruptcy Code and under OLA. Specifically, defining when a "transfer" is "made" by reference to when the rights of a "bona fide purchaser" are superior to the rights of a holder of a previously perfected security interest is a concept which, under the Bankruptcy Code is applied only in the context of fraudulent transfers and of preferential transfers of real property other than fixtures. Under OLA this concept is applied in the context of not only fraudulent transfers (Section 210(a)(11)(A) of the Dodd-Frank Act) and preferential transfers of real property other than fixtures but also to preferential transfers of personal property and fixtures (Section 210(a)(11)(B) of the Dodd-Frank Act). The result is that the FDIC as receiver for a Covered Financial Company under OLA may have broader powers than does a Bankruptcy Trustee under

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[23] See http://asf.informz.net/ASF/data/images/emailattachments/advocacy/asf_orderly_liquidation_letter_to_the_fdic_12_13_10.pdf.

the Bankruptcy Code to avoid, as preferential transfers, certain previously perfected security interests in personal property and fixtures, even though the transfers are inherently non-preferential.

We requested in the letter that the FDIC issue guidance resolving the ambiguity, and providing that, (1) consistent with the Bankruptcy Code, the "bona fide purchaser" standard for defining when a transfer is "made" will be applied under OLA only with respect to fraudulent transfers and to preferential transfers of real property other than fixtures; (2) the standard found in Section 547(e)(1)(B) of the Bankruptcy Code be applied to determine the timing of transfers of personal property and fixtures and (3) the 30-day grace period to perfect a transfer, found in Section 547(e)(2) of the Bankruptcy Code be applied to preferences under Section 210(11)(B) of the Dodd-Frank Act. Although the statute's drafting inconsistency is a narrow and technical one, we believed, and continue to believe, that the resulting ambiguity is of considerable practical importance to the consumer and commercial credit industries, as many standard practices in these industries have been established and have evolved, in response to, and in reliance on, the well established Bankruptcy Code provisions.

i. **Consequences of the Inconsistency for Consumer and Commercial Credit Industries**

The ambiguity described above could potentially impact all lending secured by personal property, securitizations of personal property and even sales involving non-possessory interests in personal property where perfection of transfers of such property by possession or other means could trump perfection by filing a financing statement under the UCC[24] or other similar filings or actions under other applicable law. The issue arises most prominently with respect to consumer and commercial credit transactions in which the subject property is characterized under the UCC either as "chattel paper" or as an "instrument." In the securitization industry, this could affect many different asset classes, but would predominantly affect auto and student loans. Specifically, the ambiguity could affect sales[25] of chattel paper or instruments, as well as transactions in which chattel paper or instruments serve as collateral securing a party's obligations if, in either case, the transfer has been properly perfected by filing a financing statement, as permitted under the UCC, and not through possession (which is not required for such proper perfection if perfection has been obtained by filing).

Section 9-102(a)(11) of the UCC defines "chattel paper" to include "a record or records that evidence both a monetary obligation, and a security interest in specific goods … or a lease of specific goods." Section 9-102(a)(47) of the UCC defines an "instrument" as "a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment." Under the UCC, a security interest in chattel paper or instruments may be properly perfected by filing a financing statement, among other means.

Under the UCC, while the filing of a financing statement would properly perfect a security interest in chattel paper or instruments, such that a "hypothetical lien creditor" could not

[24] See *e.g.,* UCC Section 9-330.
[25] Under Section 1-201(37) of the UCC, the term "security interest" includes "any interest of.....a buyer...of chattel paper."

acquire a security interest in the chattel paper or instrument that is superior to that of the secured party, the filing of a financing statement alone would not prevent a "bona fide purchaser" from acquiring a security interest in the chattel paper or instrument that is superior to that of the secured party.[26] Therefore, while the Bankruptcy Trustee under the Bankruptcy Code *would not* be able to avoid as a preferential transfer a security interest in chattel paper or instruments granted and perfected by means of filing a financing statement at closing or within 30 days of closing, the FDIC under OLA *would* potentially be able to avoid as a preferential transfer that very same security interest.

Upon the avoidance of such transfer, the claim otherwise secured by a properly perfected security interest would become an unsecured claim in the FDIC receivership. As a result, the creditor would receive less than it would have received in a Chapter 7 Bankruptcy Code liquidation of the same company.

The consequences to the consumer and commercial credit industries – and their creditor counterparties – are further, and indeed greatly, exacerbated by the absence of a "transition rule" for OLA. Many credit facilities, securitizations and sales date prior to the enactment of the Dodd-Frank Act, and were structured in reliance on the certainty of the provisions of the Bankruptcy Code. The documentation, policies and procedures of both the financial companies and their creditors, and the overall architecture of these transactions and programs, depended on

[26] This is a consequence, for chattel paper, of the rule found in Section 9-330(b) of the UCC: "A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party." A good faith purchaser of an instrument who takes possession of it is likewise given priority under Section 9-330(d) of the UCC and, in the case of a negotiable instrument, a holder in due course of the negotiable instrument obtains priority under Section 9-331 of the UCC. None of these purchasers, who rely upon possession of the chattel paper or instrument, have an obligation to conduct UCC searches to discover any filed financing statements in order to obtain priority.

the proper and effective perfection achieved by the filing of a UCC financing statement. Although in some instances these existing transactions and programs could now be re-engineered to comply with the “bona fide purchaser” construct applicable to fraudulent transfers and preferential transfers of real property other than fixtures, that is only a partial solution, and one which will be time consuming, difficult and expensive to implement. The delays needed for such implementation would also be expected to adversely affect the liquidity of the affected financed company during the delay, as it will be difficult, if not impossible during the period of delay to enter into new financing facilities, or portfolio sales, which rely on the existing practices.

With respect to programs currently in place, the re-engineering is in any event only a “partial solution.” This is due to the look-back provisions of the preference rules. These rules, which provide that a solution, once implemented, is itself a transfer of property of the debtor to or for the account of a creditor on account of an antecedent debt. As a result, the implementation of the solution would not eliminate the creditor's preference risk until the preference period, commencing on the implementation of the solution has past. The general preference look-back period is 90 days, but for transfers among affiliated companies, the look-back period is a year. Since many consumer and commercial finance companies structure their financing, securitization and secondary-market activities through transfers to subsidiaries, the look-back period arguably could be a year. Accordingly, creditor counterparties will severely discount the efficacy of any proposed solution.

Further, while some types of consumer and commercial credit transactions are documented by “chattel paper” and “instruments”, others are not (such others being characterized under the UCC as, for example, "accounts" or "general intangibles"). Sometimes these are different products of the same finance company (for example, certain types of inventory financings), while in other instances they may be the identical product, simply documented in a different way (this is the case in the student loan industry). Under OLA, in some cases a properly perfected security interest could be attacked as a preferential transfer which another very similar transaction could not be. Thus, the effects and the uncertainty to financial companies' creditor counterparties are further magnified.

ii. FDIC's General Counsel's Letter I

On December 29, 2010, the FDIC issued a General Counsel's Letter to the ASF in which it provided an interpretation of the OLA provisions of the Dodd-Frank Act that effectively alleviated the concerns outlined in our December 13th letter.[27] The letter acknowledged the inconsistencies between the OLA provisions and the Bankruptcy Code that were highlighted in ASF's letter and concluded that the treatment of preferential and fraudulent transfers under the OLA provisions was intended to be consistent with the related provisions under the Bankruptcy Code. In addition to providing an interpretation, the letter indicated that FDIC staff would recommend to the FDIC Board of Directors that the Board adopt a regulation to the same effect, in consultation with the Financial Stability Oversight Council. Just yesterday, at the March 15, 2011 Board Meeting, the FDIC issued a "Notice of Proposed Rulemaking Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act"[28] that, among other things, purports to "ensure that the preferential and fraudulent transfer provisions of the Dodd-Frank Act are implemented consistently with the

[27] See http://www.americansecuritization.com/uploadedFiles/FDICGeneralCounselLetterreOLA-12-29-10.pdf.
[28] See NPR at http://www.fdic.gov/news/board/10MarNo6.pdf.

corresponding provisions of the Bankruptcy Code" and [conform OLA] "to the interpretation provided by the FDIC General Counsel in December 2010."[29] ASF applauds the FDIC for taking action on this critically important issue and attempting to resolve the ambiguity in Title II. We believe that the proposed rules are a step in the right direction and plan to provide detailed comment with respect to any outstanding concerns. Yesterdays' FDIC NPR did not, however, address a second and even more troubling aspect to the securitization market as a result of the new OLA provisions.

c. **Repudiation Power Issue**

This past December, ASF became aware of another issue relating to the authority of the FDIC to repudiate contracts under Section 210(c)(1) of the Dodd-Frank Act and the scope of the temporary automatic stay under Section 210(c)(13) of the Dodd-Frank Act. These provisions raise concerns regarding two issues that are crucial not only to the securitization market but to all parties that have financial dealings with a Covered Financial Company or a covered subsidiary thereof: (1) whether a transfer of property by the Covered Financial Company or a covered subsidiary thereof would constitute an absolute sale or a secured borrowing and (2) whether the separate existence of another person or entity would be respected and its assets and liabilities not substantively consolidated with the assets and liabilities of the Covered Financial Company or of any covered financial subsidiary thereof.

The insolvency laws that would apply to Covered Financial Companies in the absence of OLA are rather clear on these legal-isolation issues, and supply well-established principles for resolving them. Most notable are the decades of precedent that exist under the Bankruptcy Code

[29] See FDIC Press Release issued March 15, 2011 at http://www.fdic.gov/news/news/press/2011/pr11056.html.

and in judicial decisions under the Bankruptcy Code. Financial-market participants have relied on these principles and this precedent when transacting business with financial companies that, under the Dodd-Frank Act, may be designated as Covered Financial Companies and subjected to liquidation under OLA. The concern that has emerged is whether the Dodd-Frank Act required that the FDIC, as receiver for a Covered Financial Company or a covered subsidiary thereof, respect and follow these legal authorities as well.

The resolution of this concern, in our view, is clear. As noted previously, under Section 209 of the Dodd-Frank Act, Congress has directed the FDIC to harmonize its rules implementing OLA "with the insolvency laws that would otherwise apply to a covered financial company." The underlying policy rationale behind this desire for harmonization is that Congress wanted to avoid requiring parties engaging in transactions with financial companies and their subsidiaries to be forced to plan transactions based on two different insolvency regimes given that they would not know, at the time of executing the transaction, which regime would ultimately apply. This holds even more true for transactions that were executed before the Dodd-Frank Act was signed into law and that, due to the absence of any transition provision in OLA, could be affected by such a liquidation. We note further in this context that the Senate Report on the Dodd-Frank Act, in its Section on OLA, observes that "the use of this [OLA] authority [is expected to be] very rare. There is a strong presumption that the Bankruptcy Code will continue to apply to most failing financial companies...including large financial companies." Senate Report at 58. Our concern with respect to the Section 210(c) repudiation authority goes to precisely this point: there are long-standing Bankruptcy Code doctrines which financial companies have been careful to follow in their sale, securitization and other commercial transactions and programs. For those companies to now try to structure transactions to an unknown target, just in case this "very rare" authority may be invoked in the future, appears to us to be costly and unnecessary.

Because of the mandate in Section 209, we believe that the FDIC would be required to respect and follow "the insolvency laws that would otherwise apply to a covered financial company" when addressing any legal-isolation issue under OLA, including in the context of its repudiation power under Section 210(c)(1) of the Dodd-Frank Act and the temporary automatic stay under Section 210(c)(13) of the Dodd-Frank Act.

i. FDIC's General Counsel Letter II

On January 14th, ASF submitted a letter to the FDIC requesting that the FDIC issue, as promptly as practicable, a letter from the Acting General Counsel to the effect that:

(a) The FDIC as receiver for a covered financial company shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or re-characterize as property of the covered financial company or the receivership financial assets transferred by the covered financial company, provided that such transfer satisfies the conditions for a legal true sale as applied in the law defining property of the estate under the Bankruptcy Code.

(b) The Act does not itself contain any provision which would mandate a different approach or analysis regarding the factors or circumstances under which

> the separate existence of one or more legal entities would properly be disregarded than the existing approach or analysis under the Bankruptcy Code.[30]

In response to ASF's Request, the FDIC issued a General Counsel's Letter on January 14th addressing the concerns raised in ASF's request.[31] In the letter, the FDIC clarified that its repudiation power under the OLA provisions of the Dodd-Frank Act would be exercised consistent with the U.S. Bankruptcy Code or other applicable insolvency laws, including bankruptcy- and State-law principles governing legal isolation, on an interim basis until 90 days after the FDIC Board of Directors adopts a regulation to formally address the matter, or until at least June 30, 2011. Again, we applaud the FDIC for its quick action to patch this issue that the market so desperately needed. However, we believe that a legislative solution is necessary to achieve certainty in the market once the interim relief expires and stand ready to endorse a bill that requires the OLA provisions to be exercised consistent with the U.S. Bankruptcy Code or other applicable insolvency laws, including bankruptcy- and State-law principles governing legal isolation. Such a bill would be consistent with the legislative intent that (i) "a creditor shall, in no event, receive less than the amount that creditor is entitled to receive" if the FDIC "had not been appointed receiver with respect to [a] covered financial company; and the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code"[32] and (ii) the FDIC "seek to harmonize applicable rules and regulations promulgated under [OLA] with the insolvency laws that would otherwise apply to a covered financial company."[33] Such a bill would also

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[30] See http://www.americansecuritization.com/uploadedFiles/ASF_Orderly_Liquidation_Letter_to_the_FDIC_1_14_11.pdf.

[31] See http://www.americansecuritization.com/uploadedFiles/GC_Letter_to_ASF_1_14_2011.pdf.

[32] See Sections 210(a)(7)(B) and (d)(2)(B) of the Dodd-Frank Act.

[33] See Section 209 of the Dodd-Frank Act.

avoid the situation where parties extending credit to potential Covered Financial Companies would be forced to plan transactions based on two different insolvency regimes given that they would not know, at the time of extending credit, which regime would ultimately apply.

Finally, we are also concerned about the potential for the FDIC to reach beyond the clear intent of Dodd-Frank and use its OLA power to implement conditions for non-banks that are similar to the ones prescribed for the FDIC's bank securitization safe harbor. ASF submitted multiple comment letters with respect to the FDIC's Advanced Notice of Proposed Rulemaking and Notice of Proposed Rulemaking regarding the proposed securitization safe harbor for banks. The ASF and its membership continue to strongly oppose linking a determination of whether financial assets have been legally isolated in the case of receivership to preconditions addressing capital structure, disclosure, documentation, origination and compensation. Under the bank safe harbor, investors will bear the burden of the loss of the safe harbor if any of the securitization preconditions are not satisfied by the issuer or sponsor. Investors in securitization should bear risks associated with the assets underlying a securitization but not risks associated with the originator, who may or may not subsequently be deemed to be a Covered Financial Company.

IV. Conclusion

ASF supports permanent legislative solution to the issues created by Dodd-Frank's repeal of Rule 436(g) and certain aspects of the Orderly Liquidation Authority in order to avoid another shutdown of the securitization market. The ASF has been a strong and vocal advocate for targeted securitization market reforms and we continue to work constructively with policymakers to identify and implement them. We applaud the willingness of the Subcommittee to convene this hearing to revisit an important topic that directly impacts financing for U.S. homeowners, consumers and businesses, and we greatly appreciate the invitation to appear before this Subcommittee to share our views related to this current issue. I look forward to answering any questions the Subcommittee may have.

Thank you.

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	**2. Organization or organizations you are representing:**
Tom Deutsch	American Securitization Forum

3. Business Address and telephone number:
[redacted]

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	**5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?**
☐ Yes ☑ No	☐ Yes ☑ No

6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

7. Signature:
Tom Deutsch

Please attach a copy of this form to your written testimony.