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**Item 1115 of Regulation AB, Asset
Backed Securities (Regulation AB), 17
C.F.R. §229.1115**

December 27, 2006

VIA E-MAIL

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549
Attn: Mr. Jeffrey S. Cohan, Esq., Special Counsel
Office of Chief Counsel

Re: Required Disclosure under Item 1115 of Regulation AB

Dear Mr. Cohan:

The International Swaps and Derivatives Association (“ISDA”)¹, the Securities Industry and Financial Markets Association (“SIFMA”)² and the American Securitization Forum (“ASF”)³ appreciate the opportunity to continue discussions with the Securities and Exchange Commission staff (the “Staff”) with respect to the disclosure obligations of certain derivatives counterparties

¹ ISDA, which represents participants in the privately negotiated derivatives industry, is the largest global financial trade association, by number of member firms. ISDA was chartered in 1985 and today has approximately 700 member institutions from 50 countries on six continents. These members include most of the world’s major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. Information about ISDA and its activities is available on its web site at www.isda.org.

² The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Market Association, is based in Hong Kong. More information about SIFMA is available on its website at www.sifma.org.

³ ASF is a broadly-based professional forum of participants in the U.S. securitization market. Among other roles, ASF members act as issuers, underwriters, dealers, investors, servicers, guarantors and professional advisers in connection with securitization and structured credit transactions. ASF represents the securitization market and its participants on a wide range of legal, regulatory, accounting and market practice issues. More information about ASF’s members and activities is available at www.americansecuritization.com.

under Item 1115 of Regulation AB (“Item 1115”), part of a series of rule and form changes adopted by the Securities and Exchange Commission (the “SEC”) that address the registration, disclosure and reporting requirements for asset-backed securities (“ABS”).

This letter follows up on our previous letter to the Staff dated June 8, 2006, our meeting at the Staff’s offices on October 5, 2006 and our teleconference on October 31, 2006. Pursuant to this letter, ISDA, SIFMA and ASF hereby request the Staff’s advice that, in the factual circumstances described below, it would not recommend that the Securities and Exchange Commission (the “Commission”) take any enforcement action against an issuer of asset-backed securities who is subject to the financial disclosure requirements of Item 1115 relative to a derivative counterparty and who provides financial disclosures in relation to the derivative counterparty in the manner described in this letter.

This letter has been prepared based on review by and input from separate working groups from all three of the above organizations. References below to views and concerns of investors are based on input from a number of investor members of the ASF.

Background

The Commission adopted Item 1115 as part of Regulation AB in December of 2004. Regulation AB is effective with respect to registered ABS offerings commencing on or after January 1, 2006. Item 1115 requires registrants to provide stipulated narrative and, under certain conditions, financial information about derivative instruments and their providers. Registrants must provide basic information about the derivative counterparty and the terms of the derivative instrument under Item 1115. Item 1115 requires the agreement relating to the derivative to be filed as an exhibit to the corresponding registration statement.

Item 1115 also requires additional financial information about the derivative counterparty depending on the significance of the maximum probable exposure under the derivative relative to the value of the principal balance of the corresponding pool of assets. Disclosure is required under Item 1115 as to whether this “significance percentage” is below 10%, between 10% and 20%, or 20% or more.

The required financial information depends on the significance percentage in relation “to any entity or group of affiliated entities providing derivative instruments”. Item 1115(b)(1) and (2) state in pertinent part that where “the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments” is 10% or more but less than 20% the registrant must provide “financial data required by Item 301 of Regulation S-K”; and where “the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments” is 20% or more, “financial statements meeting the requirements of Regulation S-X” must be provided “for such entity or group of affiliated entities”. Our questions have concerned the appropriate application of the requirement for financial statements of the “entity or group of affiliates entities.”

Recent Discussions

Our discussion on October 5, and subsequent teleconference, focused on the fact pattern in which a derivative contract is issued by a derivatives subsidiary that is 100% owned by its corporate parent, and the parent issues a full and unconditional guarantee of the derivative contract. Under this fact pattern, the Staff expressed a willingness to consider no-action relief based on standards set forth in Rule 3-10 of Regulation S-X (“Rule 3-10”) in relation to disclosures by issuers of securities. In our view, these standards justify more broadly modified financial reporting based on (i) modified “condensed consolidating financial information” as described herein, in the case of an “operating subsidiary issuer” of derivatives guaranteed by its parent company, and (ii) parent financial statements only, with appropriate footnote disclosures, in the case of a “finance subsidiary issuer” of derivatives guaranteed by its parent company. We recognize that the distinctions under Rule 3-10 in relation to operating subsidiary and finance subsidiary issuers of securities are not expressly incorporated into the requirements of Item 1115. However, we believe that these criteria constitute an appropriate balance of Regulation AB’s requirements for financial disclosures with respect to derivative counterparties with the need to avoid the cost and expense of financial statement reporting in circumstances where separate financial statements would not be considered material by investors. Other fact patterns discussed in our June 8 letter are no longer under discussion.

Summary of Primary Concerns

We would like to reiterate the following concerns of our members with respect to financial disclosure required for derivatives subsidiaries issuing derivatives fully guaranteed by the parent company:

1. We remain of the view that, given the structure of most guaranteed derivative subsidiaries, separate financial disclosure as to the derivatives subsidiary is not considered material by investors;
2. We remain of the view that, in the case of derivatives subsidiaries guaranteed by their parent companies, Item 1115 financial disclosure requirements impose undue costs and some degree of disruption risk on the securitization markets;
3. Full compliance with the requirements for condensed consolidating financial information in accordance with Rule 3-10 will be prohibitively expensive for derivatives subsidiaries; and
4. In the case of a derivative instrument issued by a special purpose subsidiary guaranteed by the parent, only parent financial statements should be required.

Relief requested: For the reasons outlined below, we respectfully request that the Staff grant no-action relief such that:

(i) derivatives subsidiaries (other than a special purpose derivatives subsidiary as described below) could provide a modified version of the condensed consolidating financial information required of an operating subsidiary under Rule 3-10(c)(4), under which separate

columns are provided only as to the parent, the derivatives subsidiary and the total consolidated amounts, for the limited purpose of compliance with Item 1115; and

(ii) special purpose derivative subsidiaries, as defined below, could provide parent company financial statements including the footnote disclosures contemplated by Rule 3-10(b)(4), for the limited purpose of compliance with Item 1115.

Scope of Letter; Definitions

All fact patterns discussed in this letter are limited to scenarios where all of the following criteria apply:

- The parent company is either: a) a U.S. entity that files periodic reports under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and prepares financial statements in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”), or b) a foreign business that files periodic reports on Form 20-F and either prepares U.S. GAAP financial statements, or prepares non-U.S. GAAP financial statements and provides a reconciliation to U.S. GAAP, provided that in the case of derivatives where the aggregate significance percentage is 10% or more but less than 20% the information required is limited by Instruction 5.a. to Item 1114 of Regulation AB;
- The derivatives subsidiary is 100% owned by the parent company as contemplated in Rule 3-10;
- Each derivative with respect to which financial information is required under Item 1115(b) is issued by a derivatives subsidiary and is fully and unconditionally guaranteed by the parent company in accordance with the standards set forth in Rule 3-10 in relation to guarantees of securities; and
- No other subsidiary of the parent company guarantees any derivative with respect to which financial information is required under Item 1115(b).

As used in this letter, a “derivatives subsidiary” is any subsidiary of a parent company which is the counterparty under a derivative contract with respect to which financial information is required under Item 1115(b). A derivatives subsidiary (other than a special purpose derivatives subsidiary) may engage in other operations, and may be a counterparty under other derivatives contracts that do not meet the above criteria if financial information is not required under Item 1115(b) with respect thereto. Derivatives subsidiaries typically do not prepare standalone U.S. GAAP financial statements.

As used in this letter, a “special purpose derivatives subsidiary” is a derivatives subsidiary meeting the above criteria, and which also has no assets, operations, revenues or cash flows other than those related to the issuance, administration and payment of one or more derivatives contracts – all of which are fully and unconditionally guaranteed by the parent company as contemplated in Rule 3-10. A special purpose derivatives subsidiary may engage in

a back-to-back derivatives contract with any other affiliates of its parent, in which case the special purpose derivatives subsidiary's obligations under the back-to-back derivatives contract would also be fully and unconditionally guaranteed by the parent company. In addition, a special purpose derivatives subsidiary may contract with other entities for administrative services ancillary to its derivative contracts.

In addition, we note that the relief requested below is intended to be an alternative to the financial information required under Item 1115. For example, if the relief requested below is granted allowing derivatives subsidiaries (other than a special purpose derivatives subsidiary) to provide modified condensed consolidating financial information, such a derivatives subsidiary would still be able to provide instead selected financial data required by Item 301 of Regulation S-K if the aggregate significance percentage is 10% or more but less than 20%.

Information Considered Material by Investors

The Commission has a long history of adapting financial reporting standards to reflect the different sets of circumstances which may be presented when the obligations of a company are guaranteed by its own parent or affiliate. In Staff Accounting Bulletin No. 53 ("SAB 53"), Release No. SAB-53, 48 Fed. Reg. 28230 (June 21, 1983), the Staff addressed these issues in the context of registration under the Securities Act of 1933, as amended (the "Securities Act") and reporting under the Exchange Act in relation to corporate securities. The Staff noted that "the registration of a guaranteed security involves the registration of two securities, each by a separate issuer" and thus "the general requirement is for full financial statement disclosure by both the issuer of the guaranteed security and the guarantor of that security."⁴ Nevertheless, the Staff went on to recognize that "under certain circumstances full financial statement disclosure by the issuer of the guaranteed security may be unnecessary" and that "[t]he appropriate disclosure for the issuer of the guaranteed security will depend on the nature of that entity in relation to the guarantor and the nature of the guarantee." In particular, the Staff established the following standard in relation to obligors with minimal operations:

Where the issuer of the guaranteed security is wholly owned . . . by the guarantor and has no independent operations, and where the guarantee is full and unconditional, the staff generally will not require separate financial statements of the issuer of the guaranteed security because the consolidated financial statements of the guarantor parent are adequate for the protection of investors. Subsidiaries that typically fall into this category are foreign financing subsidiaries, export-import subsidiaries, and other entities that function essentially as special purpose divisions of the parent. In these cases, the investor's investment decision is based on the credit worthiness of the guarantor.⁵

Under the standards established by SAB 53, the Staff addressed variants of numerous structures in which companies guaranteed and cross-guaranteed securities issued by their

⁴ 48 Fed. Reg. at 28231.

⁵ *Id.* at 28231.

affiliates. After more than fifteen years of the development of applications of SAB 53, the Commission codified and simplified these standards by adopting amendments to Rule 3-10 under Regulation S-X.⁶ These constitute the current standards in relation to disclosure by issuers of securities under Rule 3-10. In adopting these amendments, the Commission noted that the Staff “had to expand on this analysis [SAB 53] in response to registration statements and interpretive requests that involve new and complex transaction structures” and that “the staff has responded to an increasing number of requests for relief from Exchange Act reporting.”⁷ The Staff also reiterated that “there are circumstances . . . where full Securities Act and Exchange Act disclosure by both the issuer and the guarantors may not be useful to an investment decision and, therefore, may not be necessary” and where “investors would look to the financial status of the parent company that guaranteed the debt to evaluate the likelihood of payment.”⁸

In our view, the Staff’s prior conclusions in various circumstances that “disclosure by both the issuer and the guarantors may not be useful to an investment decision” are no less true – and indeed have even greater pertinence – for an investment decision with respect to derivative counterparties than in the case of an investment decision in relation to a purchase of securities. In the derivatives markets, investors focus and rely on the credit ratings of the counterparty, if it is separately rated, or of the parent which is the effective counterparty where the parent unconditionally guarantees the obligations of its subsidiary. In the case of rated ABS transactions, where the ratings of the ABS may be dependent on the cash flow available from the derivative, investors and the rating agencies similarly base their analysis on the credit rating of the derivative counterparty or of its guarantor, and in the case of guaranteed derivatives, do not give weight to other aspects of the counterparty’s financial condition. Under current market practice, separate financial statements for derivatives subsidiaries are generally not available, and investors are willing to rely on credit ratings of the derivatives subsidiary, or its guarantor, in making their investment decisions.

There are a number of reasons that financial statements of entities other than the rated guarantor are often of even lesser importance in the context of guaranteed derivatives than might be the case in the context of guaranteed securities. First, most derivative counterparties have few assets or operations other than their “book” of derivative contracts, and the values of these contracts are too volatile to make quarterly financial statements meaningful from a credit perspective. Second, very few derivative contracts involve a grant of security over any assets of the obligor other than very liquid, highly rated securities which are marked to market frequently and with respect to which financial statements also would not provide relevant information. Indeed, virtually no derivative counterparty in the market is rated on the basis of its operations *as a derivative subsidiary*. Instead, either the counterparty derives its rating from the unsecured debt rating of a company which is based on its more general assets and operations (as in the case of a bank holding company or investment bank parent company) or, in the case of certain “derivative product companies,” the rating is derived from a collateral posting methodology designed to ensure that the company has liquid assets sufficient to back its counterparties’ exposure to it from time to time. Importantly, many guaranteed derivative contracts also give the counterparty the right to transfer or novate its obligations to *any* of its affiliates who benefit from

⁶ See Release Nos. 33-7878; 34-43124.

⁷ *Id.* at

⁸ *Id.* at

the same guarantee, with no standards whatsoever as to the assets or financial condition of the affiliate transferee, so long as the transferee continues to benefit from the same parent guarantee.

Thus, our members, including investors, believe that separate financial statements of a derivatives subsidiary guaranteed by its parent would be of very limited utility. Because the financial condition of a derivatives subsidiary on a going-forward basis may be sharply affected by market factors as well as changes in the composition of the outstanding derivatives contracts, separate financial statements would not provide a basis for assessing the ongoing ability of the counterparty to perform its obligations. Market participants do not look to assets of the subsidiary in making their credit and investment decisions in relation to a derivative subsidiary.

One of the concerns motivating the criteria under SAB 53 and Regulation S-X is that where a subsidiary issuer has independent assets and operations, investors may be placing reliance on the financial condition of the subsidiary, in addition to the guarantee, in making an investment decision; and therefore appropriate financial statement disclosure is required. However, where a parent company provides a corporate guaranty of a derivative subsidiary's obligations, the parent company financial statements generally provide the sole basis for assessing the ongoing ability of the derivative counterparty to perform its obligations. The balance of interests in favor of more limited financial statement disclosures is thus even stronger in the circumstances of most derivative counterparties than is the case for issuers of securities.

Financial Statement Provisions of Regulation AB

The proposed financial statement provisions of Item 1115 were the subject of a number of comments from industry participants, but most of the comments surrounded the issue of the appropriate threshold for provision of financial statements. As initially proposed, Regulation AB required that if an "entity or group of affiliated entities was liable or contingently liable to provide payments representing 20% or more of the cash flow supporting any class of the asset backed securities, audited financial statements meeting the requirements of Regulation S-X would be required."⁹ This requirement was applicable both to credit enhancements, such as guarantees of registered ABS, and derivatives that were a source of potential cash flows with respect to ABS. Extensive industry comments focused on adapting the standard of counterparties being "contingently liable" for payments of "cash flow" to one aimed at thresholds of probable credit exposure for derivative counterparties. In adopting the final Item 1115, the Staff noted comments to the effect that "participants in the derivatives markets routinely evaluate the maximum probable exposure of a counterparty, such as in order to make a credit decision as to counterparty risk or set required collateral levels" and agreed that this approach "would be more consistent with how the market estimates the significance of such instruments."¹⁰ The requirement that in appropriate circumstances the issuer would "provide financial statements meeting the requirements of Regulation S-X . . . of such entity or group of affiliated entities" was retained.¹¹

⁹ 69 Fed. Reg. 26650, 26679 (May 13, 2004).

¹⁰ 70 Fed. Reg. 1506, 1549 (January 7, 2005).

¹¹ *Id.* at 1611.

The language in Item 1115 referring to financial statements of a “group of affiliated entities” does not correspond to a defined term in Regulation S-X; that is, U.S. GAAP parlance does not ordinarily speak of financial statements of a “group.”¹² In the context of an ABS issuer which is exposed to a derivative counterparty directly and to its guarantor through a guarantee of the derivative, the reference to financial statements of a “group of affiliated entities” might have been taken to contemplate financial statements of the consolidated group which included the guarantor parent and the guaranteed subsidiary. The difficulty is compounded by the fact that in the usual context of Regulation S-X, the otherwise applicable requirement to provide financial statements for both guarantor and primary obligor – but for Rule 3-10 – is quite clear, because both the security and the guarantee are being registered under the Securities Act. But the corresponding basic standard of Rule 3-10(a), to the effect that “[e]very issuer of a registered security that is guaranteed and every guarantor of a registered security must file the financial statements required for a registrant by Regulation S-X” is thus somewhat unclear as applied to Item 1115, because neither the derivative nor the guarantee of the derivative is being registered, but financial statements are still required. Furthermore, the terms of Item 1115 are not expressed to apply separately to derivative counterparties and guarantors of derivative counterparties. Such considerations may account for some market participants having concluded that the proposed language referred to consolidated financials of the parent guarantor, and failing to raise this issue in the comment process.

An approach looking solely to consolidated financial statements of the parent guarantor, however, would be inconsistent with Rule 3-10’s standards for operating companies in the case of guaranteed securities – where consolidated parent financial statements are insufficient. In our recent discussions, the Staff has been clear that Item 1115 does not incorporate the special standards for guaranteed securities of “operating companies” and “finance subsidiaries” in Rule 3-10. In the context of derivative counterparties, as with any guaranteed instrument, however, it remains true that “there are circumstances . . . where full Securities Act and Exchange Act disclosure by both the issuer and the guarantors may not be useful to an investment decision and, therefore, may not be necessary.”

In light of the foregoing, our members believe that the Staff should recognize that where a parent company wholly guarantees the obligations of a derivatives subsidiary, the financial statements or information of such parent/guarantor would provide sufficient disclosure and be most material to investors, since (1) the parent company is the ultimate credit of the derivative or of the enhancement and would provide material information to investors with respect to the credit risk to the derivative subsidiary, and (2) the derivative subsidiary is frequently an entity with limited operations independent of its parent, whose financial statements or information would not present a clear picture of the credit risk associated with the relevant derivative. We believe that although the Rule 3-10 standards for “operating subsidiaries” and “finance subsidiaries” are not applicable by their terms to Item 1115, the Staff should grant no-action relief based on an application of these standards by analogy in the context of derivative counterparties.

¹² The language may refer to the standards set forth in Article 3A of Regulation S-X addressing consolidated and combined financial statements. For example, although the general rule is that “registrants shall consolidate entities that are majority owned and shall not consolidate entities that are not majority owned,” Article 3A of Regulation S-X sets out possible exceptions to this standard.

We discuss details of this proposed relief below. First, however, we would like to highlight a number of other concerns which justify the proposed relief.

Unintended Consequences of Requirement

Since the implementation of Item 1115, a practice already has evolved where derivatives contracts in public ABS transactions now are subject to an agreement whereby one of a number of actions must be taken if the significance percentage of the derivatives instrument equals or exceeds the 10% or 20% significance threshold and the counterparty is not able or willing to provide the required financial information under Item 1115. Given the constraints under Item 1115, absent any relief, one of the following actions results in most instances: (a) the derivative is novated with the parent company as the direct counterparty, (b) the derivative is replaced by one issued by an unaffiliated third party that can provide the required disclosure, or (c) the derivative is terminated. We note that the existence of the right to novate the swap to the parent company, when financial disclosure is required, supports the premise that all transaction participants, as well as the rating agencies, are of the view that only the parent's financial statements are material. If the assets of the primary obligor may effectively become unavailable at any time through a novation of the derivative to the parent, it is evident that only the parent's financial condition is being taken into account for purposes of any investment decision.

A disclosure requirement necessitating a transfer or termination of the derivative contract may arise after the closing date of a particular ABS issue, because as the Staff has made clear, the significance percentage test is an ongoing requirement.¹³ This could arise due to changes in market conditions and in the assumptions used to calculate the significance percentage. It may be true that in most transactions, the likelihood of the significance percentage reaching 10% or more while Exchange Act reporting continues as to the ABS issuing entity is remote. Notwithstanding that, financial institutions and their subsidiaries should have policies and procedures in place to appropriately respond to the triggering of these disclosure requirements, even if the likelihood is remote.

Novation to the parent company poses significant operational issues, in that financial institution holding companies do not generally have in place personnel, systems and procedures that would allow them to issue derivatives contracts, or conduct any business operations, directly out of the holding company.

Currently, there are a limited number of financial institutions that are in a position to write the derivative contract through an entity that can comply with the existing financial disclosure requirements. It is estimated that approximately six of the entities that write derivatives contracts used in ABS transactions are currently able to provide the financial disclosure required for a derivative with a 20% significance percentage. As a result, investors in ABS are exposed to a less diverse pool of counterparties. Furthermore, over time these concentrations are likely to lead to specific counterparties reaching maximum permitted levels of exposure to certain asset classes and originators, which will reduce the pool of available

¹³ See SEC Division of Corporation Finance, Manual of Publicly Available Telephone Interpretations, Regulation AB and Related Rules, paragraph 19.01.

counterparties further and may in turn have pricing implications for derivatives contracts, not only in dollars for SEC-registered transactions but in other currencies for exempt transactions as well. In the event that a swap counterparty ceases to be able to comply with the financial disclosure requirements of Item 1115, a replacement counterparty must be found as noted above from the reduced pool of available counterparties, which will further exacerbate concentration concerns.

A further unintended effect of the Item 1115 disclosure requirements is that they favor non-U.S. banks and banking groups. For U.S. banks, the Exchange Act reporting entity that prepares GAAP financials is the holding company, and thus a U.S. bank generally is not in a position to provide Item 1115 financial information, whether as counterparty or guarantor. On the other hand, as noted above, U.S. bank holding companies generally do not have the operational infrastructure necessary for day to day transactional activity as a direct counterparty. In contrast, for non-U.S. banks the Exchange Act reporting company which provides GAAP or GAAP reconciled financial statements is the bank, and the bank can issue derivatives directly. As a result, almost all of the very limited number of entities that currently write derivatives contracts used in ABS transactions, and that would be able to provide the financial disclosure required for a derivative with a 20% significance percentage, are non-U.S. banks. While a U.S. bank holding company can establish a derivative subsidiary and guarantee its obligations, it can currently do so only by incurring the cost of preparing separate financial statements for that subsidiary's operations if Item 1115 financial disclosure is required. The relief requested under this letter would also therefore ameliorate a disparate and anti-competitive adverse impact of the Item 1115 disclosure requirements on U.S. banks and banking groups.

Conversely, the financial disclosure requirements of Item 1115 have a disproportionate impact on foreign ABS issuers compared to U.S. issuers. Foreign ABS issuers register U.S. dollar-denominated securities backed by assets denominated in local currencies and therefore enter into currency swaps to hedge the exchange rate risks. These currency swaps typically have significance percentages in excess of 20%, so U.S. GAAP financial statements of the swap counterparties must be provided. Because U.S. ABS issuers generally issue U.S. dollar-denominated securities backed by U.S. dollar-denominated assets, they generally do not require currency swaps. U.S. issuers (and foreign issuers) do enter into interest rate swaps, but interest rate swaps do not typically have a significance percentage of 10% or more, so no swap counterparty financial disclosure is required. Foreign ABS issuers, therefore, are disproportionately exposed to the issues presented by Item 1115, which places them at a competitive disadvantage compared to U.S. issuers. Already, foreign issuers are bearing the increased costs of compliance with the requirements of Item 1115 by swap counterparties, including the cost of obtaining auditors' consent letters. In contrast, other provisions of Regulation AB, such as the extension of immediate eligibility for Form S-3 to foreign issuers, are intended to place foreign issuers on a level playing field with U.S. issuers. Several foreign issuers have decided already to forego SEC registration for issuances involving currency swaps due in part to the risks and costs associated with Item 1115. Depending on demand for specific asset classes, this could have pricing implications for these issuers.

A derivative contract may be terminated as a last resort, which of course would be detrimental to the interests of investors. Indeed, after the financial disclosure requirements are triggered, none of the above actions are results investors desire or expect.

Cost of Fully Compliant Condensed Consolidating Financials is Prohibitive

We appreciate the Staff's willingness to consider reducing the financial disclosure required with respect to the derivatives subsidiary to the "condensed consolidating financial information" disclosure required of an operating subsidiary pursuant to Rule 3-10(c). However, our members believe the cost and practicality of providing such information is prohibitive.

As set forth in Rule 3-10(c), condensed consolidating financial information requires separate columns not only as to the parent company, the derivatives subsidiary, and the entire consolidated group, but also require separate columns for "any other subsidiaries of the parent company on a combined basis" and "consolidating adjustments." In many cases, the financial institutions that write derivatives used in ABS transactions are so large, complex and multi-jurisdictional that preparing the latter two columns would be a practical impossibility. Our members prefer to provide full financial statements on the derivatives subsidiary, rather than attempting to provide condensed consolidating financial information including the latter two columns.

Moreover, our investor members cite the limited utility of financial information as to a derivatives subsidiary as a basis for why the latter two columns discussed above are completely immaterial to investors. Omitting the latter two columns in this context, as compared to the context of a direct issuance of securities by an operating subsidiary, is further justified in light of the fact that the derivative contract is merely an ancillary instrument that is included within a larger ABS issuance.

We further note that nearly all derivative contracts which back ABS are either currency or interest rate swaps, and that these are generally highly liquid contracts characterized by extremely thin profit margins. As such, a number of entities which did not have Item 1115 compliant disclosure in place simply exited the business, rather than incur the significant additional administrative expense of having to create any type of new financial disclosure.

Request for Modified "Operating Subsidiary" Treatment for Derivatives Subsidiaries

We do believe that derivatives subsidiaries (other than special purpose derivatives subsidiaries) that issue derivatives contracts under the criteria described above are very analogous to operating companies as contemplated under Rule 3-10(c) – and indeed present an even more compelling case for limited financial disclosure. The only element that keeps such derivative subsidiaries from falling within that rule is the fact that the instrument in question is a derivative instead of a security.

As discussed above, however, Rule 3-10 and the Staff's prior practice under SAB 53 speak to standards of disclosure and appropriate bases for investment decisions, which have applicability beyond the context of instruments which take the form of securities. Indeed, the adopting release for that rule¹⁴ makes it clear that "securities" under the rule were contemplated to be "debt and debt-like" securities, and flexibly applies the rule to all securities that provide for payment of a "fixed sum at a fixed time." While not a security, a derivative contract is a financial obligation, and is an obligation to pay money in specified amounts on specified dates.

¹⁴ 65 Fed. Reg. 51692 (August 24, 2000).

The fact that the amounts payable are not fixed, but rather are to be determined in the future based on changes in an index, notional amount and other factors that are beyond the control of the obligor, does not in any way cause the derivative to take on the characteristics of an equity interest in the derivatives subsidiary or to become any less of a financial obligation from a credit perspective. We note again that rating agencies rate both debt obligations of an entity, and its obligations under derivatives contracts, in the same manner.

In short, we are of the view that an ABS issuer's credit exposure under a derivatives contract is sufficiently analogous to an investor's interest in a "debt-like" security such that treatment of derivatives subsidiaries (other than special purpose derivatives subsidiaries) that issue derivatives contracts under the criteria described above should be treated, at a minimum, in a manner similar to operating subsidiaries issuing securities under Rule 3-10(c).

However, for the reasons noted in the preceding section, we feel that this relief is unlikely to be of use if the requirement were to provide all information required under Rule 3-10(c). Therefore, we request that derivatives subsidiaries (other than special purpose derivatives subsidiaries) issuing derivatives contracts under the criteria described above be permitted to provide, in lieu of financial information otherwise required under Item 1115(b), condensed consolidating financial information with columns limited to the following:

- the parent company;
- the derivatives subsidiary; and
- the total consolidated amounts (based on the parent company and all of its subsidiaries on a consolidated basis).

In addition to the above, financial information meeting the requirements of Item 1115(b) would be provided with respect to the parent company and its subsidiaries on a consolidated basis.

Request for "Finance Subsidiary" Treatment for Special Purpose Derivatives Subsidiaries

In addition to the foregoing relief requested, we request further relief with respect to special purpose derivatives subsidiaries. As defined above, a "special purpose derivatives subsidiary" is a derivatives subsidiary meeting the criteria listed above under "Scope of Letter; Definitions," including that the entity has no assets, operations, revenues or cash flows other than those related to the issuance, administration and payment of one or more derivatives contracts all of which are fully and unconditionally guaranteed by the parent company as contemplated in Rule 3-10.

The proposed definition above closely tracks the definition of "finance subsidiary" in Rule 3-10(h). Accordingly, we believe that special purpose derivatives subsidiaries issuing derivatives contracts under the criteria described above are quite analogous to finance companies as contemplated under Rule 3-10(b). As with other derivatives subsidiaries, the only element keeping such special purpose derivative subsidiaries from falling within that rule is the fact that the instrument in question is a derivative instead of a security. But again, the focus of Item 1115

is on the financial information that is needed to properly evaluate credit exposure, and from the perspective of an investor's analysis of credit exposure, a special purpose derivatives subsidiary issuing a derivative that is fully guaranteed by its parent should be treated in the same manner as the finance subsidiary issuer of a "debt-like" security under Rule 3-10(b).

Therefore, we request that special purpose derivatives subsidiaries that issue derivatives contracts under the criteria described above should not be required to provide any financial information pursuant to Item 1115(b), but rather that the financial information disclosure requirements would be fully satisfied by providing the financial information specified in Item 1115(b) solely with respect to the parent company and its subsidiaries on a consolidated basis, together with the footnote disclosures provided for in Rule 3-10(b)(4). As the Staff recognized as far back as SAB 53, such entities "function essentially as special purpose divisions of the parent" and "the investor's investment decision is based on the credit worthiness of the guarantor."¹⁵

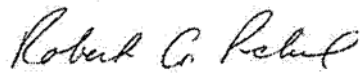
As described at the outset of this letter, ISDA, SIFMA and ASF hereby request the Staff's advice that it would not recommend enforcement action against an issuer of asset backed securities who is subject to the financial disclosure requirements of Item 1115 relative to a derivative counterparty and who (i) provides financial disclosures in relation to a derivative counterparty in the manner described in this letter and (ii) relies on modified Item 1115 financial statement reporting as described herein for its eligibility to register ABS under Form S-3. This relief should be of significant help to the industry, in that a derivative contract could be novated, if necessary, to a special purpose derivatives subsidiary rather than directly to the parent company. We feel that this approach provides significant regulatory and operational advantages.

* * *

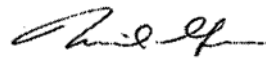
ISDA, SIFMA and the ASF appreciate this opportunity to present their concerns about Item 1115, and we would be happy to discuss any questions that the Staff may have about the foregoing discussion or to provide further information that the Staff may find helpful in evaluating this request for no action relief. Should the Staff have any questions, please do not hesitate to contact Robert G. Pickel of ISDA at (212) 901-6000, Micah S. Green of SIFMA at (212) 440-9206 or George P. Miller of ASF at (646) 637-9216.

¹⁵ 48 Fed. Reg. at 28231

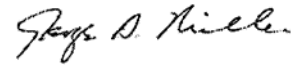
Yours sincerely,



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International Swaps and
Derivatives Association,
Inc.



Micah S. Green
Co-CEO,
Securities Industry and
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George P. Miller
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