



Via Electronic Mail: rule-comments@sec.gov

August 2, 2010

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

Re: Asset-Backed Securities Release Nos. 33-9117; 34-61858; File No. S7-08-10
(RIN 3235-AK37)

Dear Ms. Murphy:

Discover Financial Services (“Discover”) appreciates the opportunity to submit this letter in response to the request for comment by the Securities and Exchange Commission (the “Commission”) on its proposed rule regarding asset-backed securities (the “Proposed Rule”). Discover commends the Commission for its ongoing efforts to promote a more efficient asset-backed securities (or “ABS”) market. Availability of the securitization market plays a vital role in supporting the strength of U.S. depository institutions and allowing depository institutions to provide cost-effective credit to consumers.

Background Regarding Discover’s Activity in the Asset-Backed Securities Market

Discover has been active in the credit card securitization market since 1989, securitizing approximately \$95 billion in credit card receivables through more than 100 transactions. Credit card securitization has been an important, efficient and cost-effective means for Discover to fund its lending activities, allowing Discover to provide credit to its cardholders at a lower cost than would otherwise have been possible. Securitization also provides Discover with an economical source of contingent funding. Discover issues asset-backed securities both publicly and privately. As of May 31, 2010, Discover had \$15.1 billion in securitization funding outstanding as well as \$3.5 billion of available commitments from asset backed commercial paper conduits that have agreed to purchase our securities in exempt offerings. For the past 20 years, Discover’s securitization trusts have paid all maturing securities in full and on time and have never had an early amortization event, event of default or other adverse event that would cause early or late repayment. We appreciate that our ability to continue to fund our receivables through securitization depends on the performance of our assets over time and our ability to repay our investors in accordance with the terms of the securities. We have been diligent in providing transparency to investors regarding the structure of our securitization trusts and the performance of the underlying assets.

Responses to Proposed Rule and Requests for Comment

The following sections summarize the most critical issues raised by the Proposed Rule with respect to our credit card securitization program, and also respond to the Commission's request for comment on certain specific issues. As discussed below, we believe that, as drafted, certain proposed changes may be difficult or impossible for issuers to comply with and may provide only a *de minimis* benefit to investors.

Securitization has historically been an efficient, low cost funding avenue for credit card originators. The adoption of new accounting standards in this fiscal year and the related loss of sale accounting treatment for credit card securitization programs have eliminated the significant benefit of securitization, leaving the comparison of securitization to other funding sources more directly focused on pure cost of funds. Those costs, including potential increased liability associated with proposed pool asset disclosures and waterfall program, will increase significantly if the Proposed Rule is adopted in its current form. Further, the Proposed Rule raises competitive concerns for Discover and other credit card ABS issuers with the disclosure of proprietary information in the grouped account data. As a result, we and many others may decide that the costs and other concerns outweigh the economic benefits of relying on credit card securitization as a funding source. We are disheartened by the prospect that one of our key funding sources would effectively be eliminated due to increased offering costs and disclosure concerns that we believe will add little value for investors. Replacing securitization with funding sources that have traditionally been higher cost will ultimately increase the cost or decrease the supply of credit available to consumers.

Discover is a member of the American Securitization Forum (the "ASF") and has participated directly in the preparation of the ASF's comment letter on the Proposed Rule as well as the ASF's efforts to work with issuers and investors as members of various subcommittees that cover all credit-card related topics within the Proposed Rule. While the ASF represents a broad constituency covering various asset classes that utilize securitizations, many of the comments contained in the ASF response letter touch directly on areas of concern to Discover related to credit card securitization. We support many of the comments and suggestions in the ASF comment letter, and, as we point out later, particularly those related to the consensus position between issuers and investors on enhanced credit card disclosures and the continuing issues surrounding the waterfall program.

1. Section III.A of the Proposing Release – Disclosure Requirements for Pool Assets

a. Enhanced Pool-level Disclosure and Limited Group-Level Disclosure More Appropriate for Credit Card Portfolios

Item 1111 of the Proposed Rule provides for fundamental changes to the disclosure requirements applicable to asset-backed securities by inclusion of grouped account data and potential additional pool-level disclosures through the requests for comment. We commend the Commission for recognizing that loan-level data is impracticable for the credit card asset class. Through the ASF, as part of credit card issuer sub-group, we have deliberated with the credit

card investor sub-group over the most effective form of disclosure and reached consensus on a form of enhanced disclosure that the investors find useful and issuers are able to provide.

Under the ASF proposal, Discover and other credit card issuers would provide a modified version of the grouped account data, as well as additional pool-level information for portfolio and charged-off accounts on a quarterly basis. The quarterly frequency, rather than monthly on Form 10-D, is sufficient given that the pool characteristics do not change materially in a short period of time due to the size and seasoning of credit card portfolios. Unless there is a material change to the pool that would require disclosure under Form 8-K, any more frequent disclosure than quarterly would not provide incremental value to investors and would add to the overall cost burden on issuers. We recommend that the Commission adopt the alternative disclosure and reporting package proposal for credit card ABS that represents an industry-wide consensus supported by both the issuer and investor communities through the ASF and is attached herewith in Appendix 1 to this letter. We summarize the reports below:

- Representative Line (“Repline”¹) Data Report is a modified version of the Commission’s grouped account data proposal and provides the right balance of additional information to investors and practicality of producing for issuers.
- Collateral Report is a modified version of pool-level disclosures outlined in the Commission’s request for comment and provides numerous additional metrics that are cross-referenced among each other to provide more granular information.
- Report on Charged-off Accounts provides meaningful insight for investors through multiple stratifications of accounts that charged-off during the period.

The following few paragraphs enumerate our concerns with the group-level data as proposed by the Commission and why Discover believes that, as proposed, the group-level disclosure would severely inhibit Discover from utilizing securitization as a funding source.

As drafted, the disclosure provisions in the Proposed Rule would require us to disclose proprietary information about how Discover’s origination, underwriting and pricing models interact. Such information is critical to establishing and maintaining our competitive advantage in the credit card market. For example, the Proposed Rule requires the disclosure of weighted average Annual Percentage Rate (“APR”) at granular segments of the portfolio. The strong desire to protect this proprietary information by itself would likely prevent us from issuing public asset-backed securities if the Commission’s final rule includes these requirements. At the same time, as we discuss below, we do not believe that stated APR would provide meaningful information to investors.

In addition to proprietary concerns, the following aspects of the disclosure requirements or requests for comment set forth in the Proposed Rule would also be technically problematic or would not convey relevant information in the context of credit card portfolios:

¹ Representative Lines, or “Replines” refer to grouped account data lines created by grouping the underlying accounts by several characteristics. Each group based on each of these characteristics should be combined with all groups for all other characteristics. For each Repline, the Commission is proposing that issuers provide certain specified information (i.e. aggregate account balance, aggregate credit limit, etc.).

- i. Annual Percentage Rate. There may be multiple APRs per account and many cardholders are “transactors”² for whom APR is not a factor. Moreover, as a result of the CARD Act, a single customer could have multiple purchase rates for different balances since issuers are unable to reprice existing balances. There is no direct relationship between APR and the portfolio yield relevant to finance charge collections. Accordingly, we do not believe disclosure of annual percentage rate should be required.
- ii. Interchange Fees. We do not believe disclosure of interchange fees should be required since interchange is not related to the cardholder agreement and not captured at the cardholder account level. Interchange is allocated to the trust based on sales volume and is not allocated on an account level.
- iii. “Soft Data” requirements. Data related to items such as home ownership, level of education, type of employment and debt-to-income ratio is collected with the initial underwriting decision but is not updated on an ongoing basis.
- iv. Number of Days Past Due. The Proposed Rule introduces, for the sake of achieving consistency across asset classes, a new method of disclosing delinquency data based on specific ranges of numbers of days past due (between the scheduled payment date and the cut-off date). However, the Commission recognizes that these metrics could be inconsistent with other disclosures and the policies of the issuers. As such, this approach seems unfounded and potentially confusing to investors. In addition, such a calculation could create distortions in delinquency roll rates generally analyzed by credit card investors (including equity investors) based on cycles delinquent by creating situations where certain accounts will stay in the same delinquency bucket or move ahead by two delinquency buckets depending on the number of days in the month.

Finally, Replines are traditionally used for discreet amortizing pools of assets and provide a useful function of being aggregated through collateral engines that result in inputs for waterfall distributions. As such, Replines that feed into cash flow models allow users to stress various specific Replines to directly obtain impacts of stresses on cash flows. The most important factor that enables use of Replines for a cash flow model is that all input information (such as yield, losses and prepayments) is available at an account level for assets within amortizing trusts. In contrast, credit cards have many performance variables that are not available on an account level, and therefore, Replines are not a practicable input into cash flow models. Consequently, Replines for credit card collateral could serve only a very limited purpose of portfolio performance analysis.

Further, we are concerned that some large sophisticated investors would use this very detailed grouped account data only for the purpose of identifying arbitrage opportunities and making pricing decisions in the secondary market. Much of the information will have a *de minimus* impact on the initial purchasing decision, but can be accumulated and analyzed by sophisticated investors to gain an advantage over smaller less sophisticated investors on pricing, while placing the additional costs of generating the data on issuers and ultimately on consumers.

² Cardholders who pay off their balance on a monthly basis are commonly referred to as “transactors,” while cardholders who carry a balance on their account are commonly referred to as “revolvers.”

We believe that the revised disclosure presented for credit cards through the ASF, which reflects the views of investors and issuers, provides a workable expansion of disclosure requirements that will not eliminate credit card securitization as a funding source.

2. Section III.B.1 of the Proposing Release – Waterfall Computer Program

a. Waterfall Program in Proposed Rule Provides for a Full-Blown Predictive Model Rather than a Distribution Algorithm

Item 1113(h)(1) of the Proposed Rule provides that the waterfall computer model shall mean a computer program that:

- (i) gives effect to the provisions in the transaction agreements that set forth the rules by which the funds available for payments or distributions to the holders of each class of securities, and each other person or account entitled to payments or distributions, from the pool assets, pool cash flows, credit enhancement or other support, and the timing and amount of such payments or distributions, are determined;
- (ii) provides a user with the ability to programmatically input:
 - (A) the user's own assumptions regarding the future performance and cash flows coming from the pool assets underlying the asset-backed security, including but not limited to assumptions about future interest rates, default rates, prepayment speeds, loss-given-default rates, and any other assumptions required to be described pursuant to Section 229.1113; and
 - (B) the current state and performance of the pool assets underlying the asset-backed security by uploading directly into the computer program the initial XML-based Asset Data File (as defined in §232.11 of this chapter) and any subsequent monthly updates to that file; and
- (iii) produces a programmatic output, in machine-readable form, of all resulting cash flows associated with the asset-backed security, including the amount and timing of principal and interest payments payable or distributable to a holder of each class of securities, and each other person or account entitled to payments or distributions in connection with the securities, until the final legal maturity date as a function of the inputs described in paragraph (h)(1)(ii) of this section.

As described in the prospectus used in the offering of our publicly-issued asset-backed securities, the funds flow waterfall used in our securitization program is intended to be a distribution algorithm, not a predictive model. Only clause (i) of the waterfall program proposed in Item 1113(h)(1) is consistent with the cash flow waterfall as described in our offering prospectus and the underlying transaction documents. A program that provides the functionality described in clauses (ii) and (iii) of Item 1113(h)(1) would not be the programmatic equivalent of the waterfall. Rather, it would be a complex predictive model that goes far beyond the waterfall program utilized by us and other credit card issuers. This is a critical distinction that affects the level of complexity of the proposal.

The steps of the funds flow waterfall utilized in our securitization structure are exhaustively detailed in the established governing documents and in each new offering

document. Our offering documents include the logic of waterfall distributions and also explain certain triggers that occur if the performance of underlying receivables deteriorates below specified levels. The contractual waterfall is intended to address all possible contingencies, but the actual application of the waterfall rarely reflects any of these contingencies. As a result, many of the steps in our waterfall would be used only in a very limited set of circumstances arising from collateral performance, and we do not believe it is realistic to identify and build every possible scenario into a model. Additionally, we believe it would be impossible from a technical standpoint to build a model that can handle *all* of the possible user assumptions regarding current month or future collateral performance.

b. Two Exhaustive Descriptions of Waterfall Currently Provided to Investors

The funds flow waterfall utilized by our securitization program is thoroughly described in both our offering documents and the agreements that govern our program. Our established contractual documents provide the detailed waterfall that the offering documents explain in plain English. Consequently, we believe the additional waterfall program under the Proposed Rule, which is written in a programming language and has an altogether new dimension of functionality, will introduce the additional likelihood of discrepancies between the governing documents and the disclosures rather than providing clarity.

c. Credit Card Master Trust Waterfalls Are More Dynamic Than Those of Other Asset Classes

Any type of predictive model inherently includes assumptions about the future. Credit card master trusts, and particularly de-linked structures, are more dynamic than other asset classes and have more variables that can potentially impact cash flows. Forecasting credit card cash flows is impossible without assumptions above and beyond collateral performance and interest rate scenarios. The most significant of these variables are listed below:

- 1) Typically, a single pool of assets backs multiple tranches or series of notes or certificates. Collections are generally shared amongst all outstanding transactions, meaning that the collateral cash flow from the pool feeds every series. Each transaction is potentially impacted by the cash flows of all other outstanding series. Assumptions have to be made about other outstanding series.
- 2) Future issuances can affect cash flows of any given tranche, especially when considering the reallocations of cash flows, but the timing, size, pricing and tenor of future offerings can not be projected with any degree of certainty at a given point in time.
- 3) In the case of de-linked trusts, such as the Discover Card Execution Note Trust, scheduled maturities of subordinate notes could potentially lead to prefunding (cash collateralization) of senior notes. Assumptions have to be made about refinancing of subordinate maturities to avoid cash flow results reflective of prefunding mechanics.
- 4) For both linked and de-linked structures, legal documents allow for issuance of subordinate securities, additional collateral certificates and other forms of credit enhancement. These provisions were utilized to add subordination by most credit

card issuers during 2009; however, there would be no basis to assume whether or how these provisions would be utilized in the future.

Additionally, in contrast with most amortizing structures, most collateral performance scenarios produce identical cash flow payments to investors for revolving credit card trusts prior to an early amortization. For an amortizing structure, any change from base case collateral assumptions will change the ABS cash flows, and will have an impact on valuation of securities. Revolving trusts however, have securities that generally pay only periodic interest and a lump-sum principal at maturity so long as the trust is not in early amortization.

d. Liability to Issuer

With respect to both a waterfall program in the form required in the Proposed Rule and likely even a re-proposed waterfall program requirement that credit card issuers could better comply with from a technical standpoint, we believe the strict liability standard applicable to the waterfall program would prevent Discover, and many other issuers, from issuing asset-backed securities. The Proposed Rule provides for the waterfall program to be part of the registration statement and prospectus and therefore subject to the same strict liability standard as other information in the registration statement and prospectus. Given the extremely complex nature of the waterfall program required under the Proposed Rule, many issuers will likely find the risks of exposure to strict liability claims will outweigh the benefits of issuing asset-backed securities.

e. Prohibitive Cost of Developing Program

The Proposed Rule requires issuers to file a computer program that gives effect to the funds flow or waterfall provisions of a transaction in the form of downloadable source code in Python. This requirement seems intended to enable investors to perform their own analysis regarding the cash flows of a structure both up front and on an ongoing basis rather than being reliant on the analysis of third parties such as credit rating agencies.

Discover and many other master trust issuers utilize a customized program developed by an external vendor to support the monthly waterfall and distribution reports. This is largely due to the complexity of integrating the waterfalls of multiple series and classes of securities that have different terms and are issued at different times that have cash-flow-sharing provisions that operate differently under various circumstances. The programs are continually refined and re-validated to ensure compliance with governing legal documents.

The waterfall computer program requirement as proposed would require Discover to create a program that does not currently exist and in a programming language that Discover does not use for any other purpose and for which we would have no internal technical expertise. It would be likely that Discover would need to engage a third-party to produce the waterfall program. We would expect to collaborate with the third-party, clarifying elements of our waterfall, and validating the output. This is problematic due to the volume of scenarios that would need to be constructed, tested, and validated. Even then, it is likely that there would be scenarios that we did not contemplate.

We believe that the Commission very significantly underestimates the initial and on-going costs associated with the waterfall program requirement on credit card issuers. We would expect the time commitment of the proposed waterfall program to be multiple times the number of hours suggested by the Commission for both upfront development and ongoing updates due to the almost infinite number of possible scenarios and the technical expertise required for a model that complies with the Proposed Rule. Developing a waterfall program for even one platform would likely be prohibitive, and many issuers utilize numerous platforms, which would exponentially increase the cost of complying with this requirement. Given that securitization is now evaluated versus other funding sources on a pure cost basis, having this additional modeling cost would be another reason for issuers to utilize alternative funding sources. Abandoning securitization and seeking alternative funding has the potential to negatively impact the availability and cost of consumer credit.

f. Waterfall Program not a Panacea for Investors

We disagree with the assertion that the waterfall program, even if achievable in some form, would necessarily provide investors with an invaluable model for analyzing securitization structures. Many sophisticated investors have spent years developing waterfall models that they will continue to utilize even if an issuer-developed model is made available, and less sophisticated investors may not have the expertise to effectively utilize the waterfall program as the Commission envisions. Additionally, third party vendors have products for most asset classes that allow investors to value asset-backed securities, and vendors hired by investors are better positioned to be responsive to investor needs.

g. ASF Work Streams and Potential Alternatives

The waterfall computer program is the most complex of all the Commission's proposals. We appreciate that the Commission believes a waterfall model could build investor knowledge about bonds and further reduce their reliance on ratings. During the comment process, Discover and other market participants, including other credit card issuers and investors, spent a substantial amount of time trying to understand what the Commission hoped to achieve and discussing hypothetical scenarios and the feasibility of the proposal. However, no consensus amongst issuers and investors has been reached thus far. Given the substantial impact that this proposal will have on the market and its inherent complexity, we would request that the Commission allow for continued deliberation on this matter so that market participants can reach a consensus position that considers the significant issues outlined above. Discover is committed to working with the ASF to achieve consensus and would support providing a supplemental letter to the Commission after the deadline on the proposed waterfall computer program.

We believe a waterfall model in the form of a monthly cash flow distribution algorithm might garner consensus among issuers and provide incremental insights to the investors. Such a model could, for example, provide mathematical support for monthly reporting. Under such a proposal, the model would not allow users to modify collateral data or other inputs (as described in (ii) or (iii) of Item 1113(h)(1) in the Proposed Rule). Such a program would also need to provide for reduced liability to the issuer and for delivery in a more widely-accepted form than Python. We believe modeling in a spreadsheet application such as Excel would be more

transparent and user-friendly to investors, as well as more cost-effective for issuers. Spreadsheet applications such as Excel are also widely used and their utilization would not require development of additional technical skills.

3. Section II.B of the Proposing Release – New Registration Procedures and Forms for Asset-Backed Securities

a. Rule 424(h)

Rule 424(h) would require a 5-day waiting period between the issuance of a preliminary prospectus under Rule 424(h) and the first sale of the related securities. We believe this extended waiting period would significantly impact our ability to promptly access an active market window, which would negatively impact the economics of issuing asset-backed securities without necessarily providing a corresponding benefit to investors. Programmatic credit card issuance involves structures that are time tested and well known to the investor community. The collateral within a revolving master trust is reported on a monthly basis—unlike in other asset classes, credit card securitization issuers routinely provide Exchange Act reports for the entire duration of the securitization—and is not unique to a particular asset-backed security issuance as all certificates and notes share the cash flows of the master trust. Each interest in our securitization program represents a fractional undivided interest in our asset pool, meaning that every tranche of securities we issue is backed by the same assets and receive allocations on a pro rata basis. As a result, investors have extensive familiarity with the assets supporting each new issuance, because they are the same assets that support all outstanding issuances and on which monthly reporting is publicly available. The Commission has suggested in several places that securitizations resemble initial public offerings, but that is not the case for credit card master trust programs. The extended waiting period introduces transaction execution risks in determining the economics to the issuer and investor. We do not believe investors would need more than a one day waiting period to consider the specific terms of the offered securities.

In addition, new issuances of our securities do not have a dilutive effect with respect to the asset pool and do not require additions of accounts.³ As a result, for credit card securitizations the transaction size is generally considered a pricing term. We appreciate that that is an unusual aspect of these transactions, but it allows us to meet greater market demand for our securities without negatively affecting our investors. We believe this practice should be permitted to continue without triggering an additional waiting period. We likewise believe that changes to pool characteristics as a result of intrinsic changes to the portfolio from cardholder transaction activity—as opposed to additions or deletions of listed accounts—should not trigger any additional waiting period.

b. Threshold for Reporting Changes to Pool Characteristics

The Proposed Rule requires disclosure if any material pool characteristic of the asset pool changes by 1% between the offering prospectus and the final prospectus (previously 5% - other than changes as a result of pool assets converting to cash) pursuant to items 1111 and 1112.

³ We issue new securities only when we have sufficient seller's interest to convert to new securities and remain in compliance with our contractual minimum seller's interest.

Please confirm that a change in the level of the revolving pool assets due to cardmember transaction activity in the ordinary course would not be reportable.

4. Section II.B.3(a) of the Proposing Release - Retained Interest

The Proposed Rule requires the issuer of a revolving master trust structure to retain a minimum of five percent of the nominal amount of the securitization trust net of hedged positions as a condition for shelf registration on new proposed Form SF-3. We appreciate that the passage of the Dodd-Frank Act, which mandates risk retention in a broader range of circumstances, will likely change the Commission's approach to risk retention. However, we felt it important to address in the context of the Proposed Rule.

The Commission acknowledges in the Proposed Rule that credit card ABS issuers contractually retain an interest in the underlying assets of the trust, which is commonly referred to as the "seller's interest." As of May 31, 2010, Discover's seller's interest represented 44.1% of its securitization trust, or approximately \$15.1 billion. We support the Commission's proposed position that the seller's interest retained by credit card issuers may be used to satisfy any retention requirement the Commission imposes, and believe that by holding the seller's interests we create significant alignment between our interests and the interests of our investors. Prime credit card issuers, including Discover, typically retain risk at levels that exceed the 5% requirement that the Commission has proposed. For prime credit card issuers, the minimum seller's interest as defined in the governing documents is commonly 4.0-7.0% (Discover is currently 7.0%), and new receivables must be added if the seller's interest falls below the required level. Like many other issuers, we also hold subordinate interests in the securitization structure to credit enhance the senior securities, further exposing us to portfolio performance. Additionally, as each credit card securitization matures, its principal collections are no longer reinvested in new receivables, with the effect that the seller's interest increases by the amount of receivables that were backing the securitization. Finally, we are entitled to receive the "excess spread" from the securitization program, which is the yield on the portfolio minus charge-offs, costs of funds, servicing fees and credit enhancement fees. Our interest in the excess spread provides further incentives to ensure that the performance of our credit card receivables is sufficient to fully cover our obligations to our investors. Securitization does not diminish our need to preserve the creditworthiness of our customer accounts.

Separately, the Proposed Rule requires issuers to disclose in a Form 8-K filing any material change in the sponsor's interest in the securities and requests comment as to what percentage change constitutes a material change. We believe this Form 8-K disclosure requirement should be replaced with a requirement to include such information only in monthly Form 10-D filings. This approach would permit issuers to avoid constant monitoring of changes in retained interest and repeated filing of Forms 8-K while keeping investors informed of the sponsor's retained interest amount. Alternatively, we request that the Commission clarify that changes in retained interests for this purpose include only those changes that occur as a direct result of sponsor action, such as a sale of a portion of a retained interest, rather than as a result of normal course fluctuations in outstanding receivables balances or the ordinary course repayment of any subordinated securities at their maturity.

Finally, we note that the risk retention requirements in the Proposed Rule, the Dodd-Frank Reform Act and the FDIC's Notice of Proposed Rulemaking related to the FDIC's safe harbor rule on legal isolation differ in terms of which entity retains the credit risk, the method for risk retention and the circumstances in which risk retention applies. The risk retention requirements contained in the Proposed Rule should be consistent with those contained in the Dodd-Frank Act, and we strongly believe that the Commission should coordinate with the FDIC in order to ensure that these separate risk retention requirements present a uniform approach that is achievable by issuers.

5. Section II.B.3(c) of the Proposing Release - CEO Certification

The Proposed Rule requires as a condition to shelf eligibility that the registration statement include a certification from the depositor's chief executive officer certifying that the securitization assets have characteristics that provide a reasonable basis to believe they will produce cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus. We believe this requirement has several fundamental flaws. As drafted, this certification would not take into account the risk factors and other disclosures set forth in the underlying prospectus, which by definition are designed to inform investors of the potential risks related to repayment. Requiring a certification that does not refer to, and rely upon, the assumptions and disclosures set forth in the prospectus would make the signing officer responsible for guaranteeing to investors that they will be paid regardless of disclosed risks. The purpose of the Securities Act is to ensure full and fair disclosure to investors so that the *investors* can properly determine the risks of the offering. The principal executive and financial officers of the issuer who sign the registration statement, are already attesting, on behalf of the issuer, that the information set forth in the prospectus complies with the Securities Act's disclosure standards. They should not also be required to personally vouch for the quality of the securities.

6. Section V.B of the Proposing Release - Disclosure of Servicer Noncompliance

The Proposed Rule provides that the body of the annual report on Form 10-K will disclose whether the identified instance of noncompliance involved the servicing of the security covered in the 10-K filing. We believe this type of disclosure may result in many false negatives as auditors rely on a sample of transactions at the platform level in determining compliance. The fact that a particular issuer was not selected for the sample does not reduce the likelihood that its securities were subject to non-compliance. Singling out a small number of issuers to disclose that their securities were impacted by non-compliance based on sampling is inappropriate. We believe it is appropriate to disclose that the platform was subject to non-compliance and that the issuers' securities were serviced on that platform and for each issuer serviced by the platform to describe any measures taken to remedy the non-compliance.

7. Section VI of the Proposing Release - Regulation of Privately-Issued Structured Finance Products

The Proposed Rule provides that many of the offering, disclosure and reporting requirements applicable to publicly registered securities will also be applicable to privately-issued structured finance products. The Commission established a historical regime under which

issuers may offer and sell securities directly to sophisticated investors under certain conditions without incurring the costs associated with public offerings of securities. Discover and other issuers of structured finance products have traditionally utilized privately-issued transactions to fund their businesses due to cost savings associated with less stringent offering, disclosure and reporting requirements. Maintaining a lower cost of funds allows financial institutions like Discover to make additional credit available to businesses and consumers. In addition, available commitments through privately-issued transactions serve as an important source of contingent liquidity.

In supporting this approach, the Commission argues that many of the problems that arose with securitization transactions over the past several years impacted privately-issued securities in addition to publicly-issued securities. However, many or all of these factors arose solely with respect to mortgage-backed securities or CDOs, and Discover is not aware of any investors in prime consumer credit card securitizations having expressed a desire for privately-issued securities to be regulated in the same manner as publicly-issued securities. Imposing these additional requirements on all privately-issued transactions would eliminate the cost savings associated with such offerings and, we believe, eliminate the incentive for issuers to enter into these transactions. These additional costs would also increase the cost of funding for many financial institutions that provide credit to consumers.

8. Section VIII of the Proposing Release – Transition Period

As described above, we believe that many of the requirements outlined under the Proposed Rule will be difficult and time-consuming for issuers to implement and in the case of the waterfall program, a modified proposal could require issuers to hire additional staff and engage multiple third parties. We request that the Commission adopt an implementation date with respect to the pool asset disclosure reporting of no earlier than the later of one year following the date of publication of the final rules in the Federal Register and January 1, 2012. For other requirements of the Proposed Rule, including a potential modified waterfall program, we request that the Commission allow for a period of 12-18 months from the date of publication of the final rules in the Federal Register to the implementation date.

* * * * *

Discover very much appreciates your consideration of our responses and comments to the questions posed by the Proposed Rule and the views of other industry participants. Should you have any questions concerning our views and recommendations, please do not hesitate to contact me at 224.405.1380.

Sincerely,

A handwritten signature in blue ink, appearing to read 'SE C', is written over the printed name.

Steven E. Cunningham
Senior Vice President and Treasurer

Appendix 1

Illustration of Representative Line Data Report for Credit and Charge Card Pools

Grouped Account Data Line Number	Credit Score ¹	Account Age	Geographic Region	Adjustable Rate Index	Aggregate Credit Limit	Aggregate Account Balance	Number of Accounts
1	No score	Less than 12 months	NE	Fixed			
2	Less than 600	12-23 months	SE	LIBOR			
3	600-659	24-35 months	MW	Prime			
4	660-719	36-47 months	S	Fixed			
5	720-779	48-59 months	W	LIBOR			
6	780 and over	60 or more months	NE	Prime			
7	No score	12-23 months	SE	Fixed			
8	Less than 600	24-35 months	MW	LIBOR			
9	600-659	36-47 months	S	Prime			
10	660-719	48-59 months	W	Fixed			
11	720-779	60 or more months	NE	LIBOR			
12	780 and over	Less than 12 months	SE	Prime			

¹ FICO may only be purchased on a statistically significant random sample of the underlying pool which may be used to populate this table. If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure.

Form of Collateral Report for Credit and Charge Card Pools

Collateral Report - Credit Score²

Credit Score	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Minimum Payers	30-59 Days Deq. ³	60-89 Days Deq.	90 + Days Deq.
No score											
Less than 600											
600-629											
630-659											
660-689											
690-719											
720-779											
780 and over											

² FICO may only be purchased on a statistically significant random sample of the underlying pool which may be used to populate this table. If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure.

³ For each of the tables in the Collateral Report, if an issuer uses different delinquency groups as a matter of internal policy, the issuer would designate those groupings and provide explanatory disclosure.

Collateral Report - Delinquencies⁴

Delinquency	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Minimum Payers	Average Credit Score
Current-29 days									
30-59 days									
60-89 days									
90-119 days									
120-149 days									
150-179 days									
180 or more days									

⁴ If an issuer uses different delinquency groups as a matter of internal policy, the issuer would designate those groupings and provide explanatory disclosure.

Collateral Report - Credit Limit

Credit Limit	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Min. Payers	Average Credit Score	30-59 Days Deq.	60-89 Days Deq.	90 + Days Deq.
Less than \$1000											
\$1,000-\$4,999.99											
\$5,000-\$9,999.99											
\$10,000-\$19,999.99											
\$20,000-\$29,999.99											
\$30,000-\$39,999.99											
\$40,000-\$49,999.99											
\$50,000 or more											
Other ⁵											

⁵ If accounts are grouped into the “Other” category, the issuer must include a footnote explaining why the accounts did not fit into one of the prescribed groups.

Collateral Report - Account Balance

Account Balance	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Min. Payers	Average Credit Score	30-59 Days Deq.	60-89 Days Deq.	90 + Days Deq.
Credit Balance												
No Balance												
Less than \$1000												
\$1,000-\$4,999.99												
\$5,000-\$9,999.99												
\$10,000-\$19,999.99												
\$20,000-\$29,999.99												
\$30,000-\$39,999.99												
\$40,000-\$49,999.99												
\$50,000 or more												

Collateral Report - Account Age

Account Age	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Percentage of Full Payers	Percentage of Min. Payers	Average Credit Score	30-59 Days Delinquent	60-89 Days Delinquent	90 + Days Delinquent
Less than 12 months											
12-23 months											
24-35 months											
36-47 months											
48-59 months											
60-83 months											
84-119 months											
120 or more months											

Collateral Report - Top 10 States

State	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Min. Payers	Average Credit Score	30-59 Days Delinquent	60-89 Days Delinquent	90 + Days Delinquent
[State 1]												
[State 2]												
[State 3]												
[State 4]												
[State 5]												
[State 6]												
[State 7]												
[State 8]												
[State 9]												
[State 10]												
Other												

Collateral Report - Geographic Region

Geographic Region	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Min. Payers	Average Credit Score	30-59 Days Deq.	60-89 Days Deq.	90 + Days Deq.
Northeast												
Southeast												
Midwest												
South												
West												

Form of Report on Charged-Off Accounts for Credit and Charge Card Pools

**Composition of Charged-Off Accounts by Credit Score
For the [3 months ended XXXX, 20XX]**

Credit Score⁶	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
No score				
Less than 600				
600-629				
630-659				
660-689				
690-719				
720-779				
780 and Over				
Total				

⁶ FICO may only be purchased on a statistically significant random sample of the underlying pool which may be used to populate this table. Also, FICO credit scores are not purchased for charged-off accounts and, therefore, the information in this table would be based on the most recently refreshed FICO scores for the charged-off accounts, to the extent they are available. If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure.

**Composition of Charged-Off Accounts by Account Balance at Time of Charge-Off
For the [3 months ended XXXX, 20XX]**

Account Balance	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
Credit Balance				
No Balance				
Less than \$1,000				
\$1,000-\$4,999.99				
\$5,000-\$9,999.99				
\$10,000-\$19,999.99				
\$20,000-\$29,999.99				
\$30,000-\$39,999.99				
\$40,000-\$49,999.99				
\$50,000 or more				
Total				

Composition of Charged-Off Accounts by Credit Limit at Time of Charge-Off
For the [3 months ended XXXX, 20XX]

Credit Limit	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
Less than \$1,000				
\$1,000-\$4,999.99				
\$5,000-\$9,999.99				
\$10,000-\$19,999.99				
\$20,000-\$29,999.99				
\$30,000-\$39,999.99				
\$40,000-\$49,999.99				
\$50,000 or more				
Other ⁷				
Total				

⁷ If accounts are grouped into the “Other” category, the issuer must include a footnote explaining why the accounts did not fit into one of the prescribed groups.

Composition of Charged-Off Accounts by Account Age at Time of Charge-Off
For the [3 months ended XXXX, 20XX]

Account Age	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
Less than 12 months				
12-23 months				
24-35 months				
36-47 months				
48-59 months				
60-83 months				
84-119 months				
120 or more months				
Total				

**Composition of Charged-Off Accounts by State at Time of Charge-Off
For the [3 months ended XXXX, 20XX]**

State	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
[State 1]				
[State 2]				
[State 3]				
[State 4]				
[State 5]				
[State 6]				
[State 7]				
[State 8]				
[State 9]				
[State 10]				
Other				
Total				

**Composition of Charged-Off Accounts by Geographic Region at Time of Charge-Off
For the [3 months ended XXXX, 20XX]**

Geographic Region	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
Northeast				
Southeast				
Midwest				
South				
West				
Total				