WYNDHAM
WORLDWIDE

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November 7, 2011

By E-Mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Advance Notice of Proposed Rulemaking
Rule 3a-7 – Release No. IC-29779; File Number S7-35-11

Ladies and Gentlemen:

Wyndham Worldwide Corporation ("Wyndham"), an S&P 500 company, submits this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments in connection with the Commission's review of the treatment of asset-backed issuers under the Investment Company Act of 1940 (the "Investment Company Act"). In particular this letter is in response to the Commission's advance notice of proposed rulemaking with respect to Rule 3a-7 published in the Federal Register September 7, 2011.

I. BACKGROUND OF WYNDHAM AND ITS SECURITIZATION ACTIVITIES

Wyndham is one of the world's largest hospitality companies and is a public company whose common stock is listed on the New York Stock Exchange. Wyndham operates its businesses within three segments: lodging, vacation exchange and rentals and vacation ownership. The vacation ownership business—commonly referred to as the "timeshare business"—operates through Wyndham Vacation Ownership, Inc. and its subsidiaries and markets and sells vacation ownership interests to individual consumers, provides consumer financing in connection with the sale of vacation ownership interests and provides property management services at resorts.

Beginning in 2002 and continuing today, Wyndham and its predecessor have depended on the issuance of asset-backed securities to finance its vacation ownership business. During that time Wyndham subsidiaries have issued more than $5 billion in term notes of which approximately $1.5 billion are outstanding today.

Wyndham subsidiaries generally issue two or three series of asset-backed term notes per year. Each series of notes is backed by a separate portfolio of timeshare loans. Each series of notes has been sold privately in reliance upon exemptions from the Securities Act of 1933 afforded by Rule 144A and Regulation S, and each series relies upon Rule 3a-7 for exemption from the Investment Company Act.

Our issuances do not have any significant investment company features. In each series a portfolio of loans is transferred into a newly formed limited liability company. The company issues notes and the notes are secured by the loans and paid from cash flow on the loans. The assets are serviced, but not managed. There is no acquisition of additional loans or disposition of loans or trading of loans in the portfolio or periodic valuation of the portfolio.

II. WYNDHAM'S RESPONSES TO QUESTIONS CONCERNING POTENTIAL CHANGES IN RULE 3a-7

Rule 3a-7 as it currently exists generally requires that an issuer's securities be rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization ("NRSRO"), with exceptions for securities sold to institutional accredited investors, qualified institutional buyers or persons involved in the organization and operation of the issuer and affiliates. Each series of timeshare loan-backed term notes sold by a Wyndham subsidiary has been rated by at least two NRSROs. Each class of each series of such notes has been rated in one of the four highest ratings categories except certain subordinated classes which were sold to --and may only be resold to--qualified institutional buyers.

The ANPR states that the Commission is considering eliminating the references to ratings in Rule 3a-7 and questions whether such references to ratings have served, as intended, as a proxy to address Investment Company Act-related concerns and whether it is appropriate for Rule 3a-7 to make use of ratings.

We strongly urge the Commission to retain the ratings provisions in Rule 3a-7.

As described below we believe the ratings provisions do serve as a proxy to address Investment Company Act concerns, and the ratings provisions are far superior to any other options being considered.

The Rating Agencies as a Proxy to Address Investment Company Act Concerns

It has been our experience that the NRSROs are extremely diligent in reviewing the assets to be transferred into a securitization and in reviewing the structure of a transaction. The NRSROs absolutely mitigate opportunities for self-dealing by the sponsor, its subsidiaries and affiliates. The NRSROs have established specific criteria for acceptable timeshare collateral, and the NRSROs have the systems and expertise to analyze and stress collateral pools to determine the quality and likely performance of the assets. In the rating process the NRSROs understand the collateral and repeatedly seek additional information and come to their own conclusions with respect to the suitability and sufficiency of the collateral. The NRSROs also have internal

experts who understand and review the structure of our transactions, understand the requirements to protect the assets in the event of bankruptcy of the sponsor and frequently require changes before a rating is issued. These matters are important in the ability of the NRSROs to evaluate the credit of a series of notes, but also serve to deter or eliminate self dealing in the transactions and protect the assets in the event of an insolvency of the sponsor.

The rating agencies require detailed information on the portfolio of loans to be sold into any series, and the rating agencies carefully examine numerous aspects of the loans. They examine historical default rates from numerous aspects, develop an expected cumulative gross default rate and stress the expected gross default assumptions. They review the eligibility criteria for the loans. They review the cash flow and payment terms. They review the documentation and the legal opinions and analyze the structure to determine that the structure will protect the noteholders in the event of a bankruptcy. Ultimately, after all of such review, the rating agencies agree to issue a rating based upon specific levels of overcollateralization and reserves.

We believe that the NRSROs understand our asset class, and, as described above, in connection with each issuance conduct a knowledgeable and detailed review of the portfolio and the structure of a transaction. We cannot think of any other entity which has such capabilities and which would be willing to take on the responsibilities.

Even if another independent evaluator were retained to undertake the review for Rule 3a-7 purposes, we would still be required to obtain ratings on our notes to satisfy investor requirements. Ratings are very expensive and such costs will not be reduced whether or not the rating provisions are removed from Rule 3a-7. We see no need to add another layer of expense in the form of an independent evaluator hired to perform a function which the NRSROs are currently performing and performing well. We believe any other independent evaluator would be lacking in some or many areas of expertise and would produce a less reliable analysis at a significantly increased cost.

Another option which has been suggested would involve a certificate provided by the issuer and relating to the sufficiency of the cash flow from the assets to service the notes. This certificate could be based upon the views of an independent evaluator. Again, we believe this only adds another level to the process. We would still be required to engage an independent evaluator to perform much the same functions as are currently provided by the rating agencies. We believe it would be difficult to obtain such a certificate, not because the officers of the issuer would be uncomfortable with the expected performance of the assets or because of any sense of self-dealing, but because there are uncertainties in any transaction and unexpected liabilities may always arise.

<u>Applicability of Regulation AB or Shelf Eligibility Requirements</u>

The Commission asks whether some asset-backed issuers that privately offer their securities rely on Rule 3a-7. And if so, would certain of these issuers no longer be able to rely on Rule 3a-7 if

the rule were conditioned on compliance with Regulation AB or the requirements for shelf registration.

Wyndham does all of its timeshare securitizations privately. We believe that we could, with some changes in our procedures, rely upon the private investment company exclusion from the Investment Company Act afforded by Section 3(c)(7), however, reliance upon Rule 3a-7 is more efficient for our transactions. Reliance upon Section 3(c)(7) would involve another layer of representations from investors and would involve implementing procedures designed to assure that all of the holders of the notes are qualified purchasers. Reliance upon Section 3(c)(7) would be somewhat more cumbersome than Rule 3a-7.

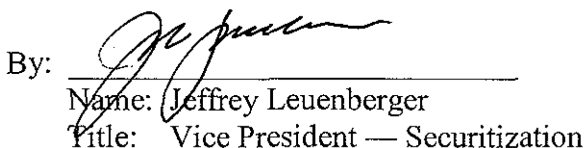
Rule 3a-7 was designed to be used by asset-backed issues whether in a private placement or a public offering. We have designed our issuances as private transactions and expect that will continue to be the case in the foreseeable future. We believe we should continue to have access to Rule 3a-7 without being subjected to requirements applicable to registered transactions. Wyndham and many other entities which issue asset-backed securities backed by less familiar asset classes and which do so privately have repeatedly argued that such issuers should not be subjected to the same rules as issuers accessing the public market through registered offerings. Conditioning Rule 3a-7 upon meeting the requirements of Regulation AB or shelf eligibility requirements would most likely cause us to look to Section 3(c)(7) for an exclusion from the Investment Company Act.

III. CONTACT INFORMATION

Wyndham very much appreciates the opportunity to provide comments in response to the Commission's advance notice of proposed rulemaking. Should you have any questions or need any clarification concerning the matters addressed in this letter, please do not hesitate to contact us by telephone at (973) 753-7116 or by email at Jeffrey.Leuenberger@wyn.com.

Very truly yours,

WYNDHAM WORLDWIDE CORPORATION

By: 

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