



Submitted via e-mail: rule-comments@sec.gov

August 2, 2010

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE Washington, DC 20549

Re: SEC File Number S7-08-10, Asset-Backed Securities, 17 Federal Register 33-9117, May 3, 2010

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Dear Ms. Murphy:

eSignSystems, a Division of Wave Systems Corp. (“eSignSystems”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (Commission) proposed rule (the “Proposal”) published in the Federal Register on May 3, 2010. The Proposal would significantly revise Regulation AB and other rules regarding the offering process, disclosure and reporting of asset backed securities. For the reasons set forth more fully below, if the current industry MISMO standards and the MERS generated 18-digit identification number already in use everyday in the real estate finance industry are not adopted, this would have an adverse effect on eSignSystems and all other mortgage origination participants.

### **The Commission should Adopt consensus industry standards**

eSignSystems supports a more expansive approach to asset-level disclosure for the protection of consumers and investors in the ABS market, but also strongly believes that the approach set forth by the Proposal should rely on and adopt already existing mortgage origination industry standards – the MISMO standards and the MERS generated 18-digit identification number. These existing standards can supply the asset-level data and a system of identification required by the Proposal. If the Proposal does not encompass these existing standards, it will impose undue burdens on the originators of the loans used by ABS issuers by forcing market participants to reconfigure their businesses to adopt the new standards. This will result in an upheaval in the mortgage origination market as it struggles to recover from the financial crisis.

### **About eSignSystems**

eSignSystems has over a decade of experience helping organizations manage their business processes entirely online.. Its award winning SmartSAFE has been recognized that last two

years within the Top 50 Service Providers in the Mortgage Industry by Mortgage Technology Magazine. In addition eSignSystems was the 2009 recipient of the prestigious Lasting Impact Award by Source Media, an award that recognizes technology that has greatly transformed the mortgage industry. The SmartSAFE Bundle enables organizations to create, sign, store, access and manage the life-cycle of legally binding electronic records. We empower enterprises and agencies to manage business processes and transactions entirely online through our SmartSAFE Bundle , which incorporates the current MISMO standards and the MERS generated 18-digit identification number. Using SmartSAFE organizations can immediately achieve regulatory compliance, improved productivity and efficiency in processing transactions, and significant cost savings through the elimination of document transportation costs, processing and storage. The SmartSAFE also provides improved control over the access to electronic information, with the ability to authenticate the identities of participants in b2b,b2c, g2g, g2b and g2c transactions. This also reduces risk and liability associated with lost documents, unauthorized purchases or unwanted access to information.

The SmartSAFE is private-labeled and is the backbone for the existing major eVaults in the mortgage industry today. Those companies include substantial industry giants such as BNY Mellon and Xerox Mortgage Services. In addition it has achieved certification from Fannie Mae for eDelivery. The SmartSAFE has tested and integrated with almost every major document provider in the mortgage industry- all through the use of MISMO standards. eSignSystems' market share of the eVault and eSignature space is estimated to be approx. 40%.

### **MISMO Standards and MERS Identification Number**

eSignSystems has been involved with, relied upon and now complies with the MISMO standards since they were developed and became industry standards. As most of the entities within the mortgage origination market have done, eSignSystems has built SmartSAFE to meet MISMO standards and record the MERS generated 18-digit identification number. It would be extremely difficult for eSignSystems, and others, if the Commission were to adopt any standards not already required by MISMO or to use any other identification number other than the MERS generated 18-digit identification number.

eSignSystems is a MISMO member and has been involved for a decade in developing the MISMO standards. It has witnessed first hand the extreme difficulties that it took to get an industry to agree on these standards and arrive at a place of agreement among lending giants.

### **The Proposal should adopt the MISMO Standards and MERS Identification Number**

eSignSystems recommends that consistent with federal rules and guidance on the use of standards in regulations (see OMB-Circular A-119, discussed in more detail below), the Commission should adopt existing voluntary consensus XML data standards. "Voluntary consensus standards," as used in OMB Circular A-119, refers to standards that have been developed in conformity with specific criteria related to the openness of the standards development process and the availability of the standards to users on a royalty-free basis. The

Commission should leverage existing XML consensus standards already in use within an industry - or within a major industry sector - to expedite compliance with the Commission's substantive reporting requirements in industries where XML data standards are already in use. The Commission should not impose a new data standard requirement that requires a uniform system of reporting across all asset-backed securities asset classes, absent a compelling argument for doing so.

**The Commission should adopt MISMO XML open and non-proprietary standards for real estate finance assets.**

eSignSystems believes open, non-proprietary, voluntary consensus standards existing within each industry (e.g. real estate finance or a sector of real estate finance) should be utilized for any new reporting requirements. Within the real estate finance industry, MISMO XML standards, developed by industry participants as nonproprietary standards, are widely implemented. We believe the Commission should adopt MISMO Standards for real estate finance assets as part of the implementation of the proposed changes to Regulation AB. The Commission's adoption of the MISMO Standards will expedite attainment of the substantive objectives of the Commission's rulemaking for investors. The MISMO Standards can be modified to address any gaps in scope between the Commission's final reporting specifications and existing MISMO XML data.

**The standards adopted by the Commission should facilitate interoperability between industry business partners and internal company divisions as well as the investment community.**

eSignSystems expects that the introduction of a new system of data standards for investor level reporting that is not well-integrated with existing industry practices will have the unintended consequence of making securities data less reliable for investors. It is generally acknowledged that the more data needs to be re-keyed or reformatted, the greater the chances for error. Because MISMO standards are widely understood and integrated within the real estate finance industry as well as XML-based, they facilitate interoperability within the real estate finance industry.

**The Commission should recognize asset-numbering systems currently in use within each industry asset class.**

eSignSystems thinks the data standard regime adopted by the Commission should not require a uniform asset numbering system across all asset classes, absent a compelling public purpose. eSignSystems does not believe that a single asset numbering system is necessary or beneficial across all asset classes. The industry infrastructure behind each asset class is supported by different systems and business processes. The adoption of a new, different, and/or conflicting numbering system would result in greater confusion, unnecessary system development costs, longer lead-times for compliance and decreased transparency by making it more difficult to track assets across multiple data and reporting systems. The real estate finance industry utilizes the MERS MIN asset identification number. It has been in use within the industry since 1997. eSignSystems supports the use of the MIN for real estate finance assets. For any given type of

ABS, a unique identifier can be provided with file submissions to denote a particular asset class, avoiding the drastic impact of imposing a whole new numbering system on an industry.

**The Commission should provide tiered compliance deadlines for implementation of the reporting using XML standards.**

The ability of market participants to comply with the proposed disclosures using XML standards will vary across industry sectors (e.g. real estate finance and credit cards) as well as within an industry. The Commission, working with leaders in each industry, should develop a timeline for implementation that advances the achievement of Regulation AB's objectives and takes into account the current state of readiness of an industry or industry sector, as well as existing marketplace conditions. When an industry has two or more discrete sectors, a rational basis exists for disparate treatment between or among sectors that differ substantially in their stage of adoption of XML standards and in the nature of their transactions. Although the goal should be the implementation of the new XML-based reporting requirement as rapidly as possible, the Commission should take into account that for some participants in asset-backed securitization transactions, significant lead time might be required for reliable implementation. A transition period should be reasonable, that is, long enough to permit reliable implementation at reasonable cost without unduly delaying attainment of the reporting objectives.

eSignSystems estimates that if additional standards are required it will require significant resources to modify its source code of the SmartSAFE Bundle. eSignSystems would need to hire additional software developers. This would require substantial time to train the new developers and then develop to the new standard. Without knowing what this new standard would look like – a conservative guess would be that the time to market with revised code would be 18 to 24 months. The cost would be significant and would be passed on to our customers, therefore increasing the ultimate cost of a mortgage.

**Summary & Conclusion**

eSignSystems appreciates and supports the Commission's need to address current market concerns relating to increasing consumer and investor protection. Should the Commission decide to move forward with the Proposal and to require loan level disclosure, eSignSystems believes the Commission should adopt standards that already exist within each ABS industry because those standards are already in use by market participants. Within the real estate finance industry, MISMO standards have been developed in an open process, are non-proprietary, and can be used free of charge. eSignSystems supports the use of MISMO standards and the MERS MIN for reporting to the Commission under the proposed revisions to Regulation AB. Adoption of any other standards would increase costs and hurt the mortgage origination market as it struggles to recover from the financial crisis.

If you have any questions or would like to discuss our comments, please contact me at (602) 840-1199 or [kpurcell@esignsystems.com](mailto:kpurcell@esignsystems.com).

Sincerely,

Kelly Purcell  
Executive Vice President, Global Sales and Marketing

cc: MISMO  
MBA  
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