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U.S. Department of the Treasury
Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street, SW, Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219
Docket Number OCC-2013-0010
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U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn.: Elizabeth M. Murphy, Secretary
File Number S7-14-11
RIN 3235-AK96

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn.: Robert deV. Frierson, Secretary
Docket No. R-1411
RIN 7100-AD70

U.S. Federal Housing Finance Agency
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400 7th Street SW
Washington, DC 20024
Attn.: Alfred M. Pollard, General Counsel
RIN 2590-AA43

Federal Deposit Insurance Corporation
550 17th Street, NW
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Attn.: Comments,
Robert E. Feldman, Executive Secretary
RIN 3064-AD74

U.S. Department of Housing and Urban Development
Regulations Division
Office of General Counsel
451 7th Street, SW, Room 10276
Washington, DC 20410-0500
RIN 2501-AD53

Re: Credit Risk Retention; Re-Proposed Rule

As we noted in our July 21, 2011 letter in response to the Agencies' request for comment on the original proposing release of the credit risk retention rules, we believe risk retention is a complementary tool with limited use in overall securitization reform. The risk retention requirements should not be considered without reference to the many other regulatory protections in place and those in development, and without reference to the fact that enhanced disclosure to investors, strong underwriting standards aimed at repayment ability and transparent processes provide significant safeguards to securitization participants. We are concerned that credit risk retention rules that are unjustifiably punitive will make securitization impracticable and ultimately restrict credit to consumers and businesses.

The impetus for Section 15G of the Exchange Act, as added by §941(b) of the Dodd-Frank Act (Section 15G), was the relatively high ratings and poor performance of securitizations backed by loans written to borrowers who did not repay their loans, specifically mortgage loans. The advent of the Consumer Financial Protection Bureau (CFPB) and enhanced ability-to-repay

standards in Regulation Z applicable to residential mortgage lending have created a screening regime that, combined with disclosure enhancements, reporting reform, diligence requirements, increased investor scrutiny, conflicts regulation, credit rating agency reform and the removal of certain statutory references to credit ratings applied to all ABS, serve to greatly improve the information asymmetry and incentive misalignment issues that existed before the crisis. We appreciate the Agencies' efforts at promulgating risk retention rules that address legislative intent and provide a workable framework for healthy securitization markets.

We believe the recommendations of the Federal Reserve Report to Congress on Risk Retention cited in our earlier letter still help guide thinking about the place of risk retention in the regulatory regime applicable to securitization. In the closing section of the Report, certain key recommendations are outlined to the Agencies responsible for implementing the credit risk retention requirements. A few of these recommendations bear repeating here in order to provide overarching principles that inform our subsequent discussion of the various rules. One recommendation asked the Agencies to consider the economics of asset classes and structures in designing risk retention requirements; this has clearly been honored in the various asset class-specific risk retention rules proposed by the Agencies, but we believe that the rules pertaining to certain asset classes can be improved.

Another recommendation noted the potential for other incentive alignment mechanisms to function as either an alternative or a complement to mandated credit risk retention. This recommendation was expanded upon through a list of other mechanisms, including overcollateralization, subordination, third-party credit enhancements, representations and warranties and conditional cash flows. We believe these structural mechanisms enhance securitization dynamics and provide greater investor protection within transactions and encourage the Agencies to consider the impact of these features in concert with risk retention. A related recommendation urged the Agencies to consider credit risk requirement in the context of all rulemakings required under the Dodd-Frank Act, some of which might magnify the effect of, or influence, the optimal form of credit risk retention. This is a critical recommendation. As noted in the study, retention requirements that would, if imposed in isolation have modest effect on the availability of credit could, in combination with other regulatory initiatives, significantly impede the availability of financing. Rulemakings under other sections of the Dodd-Frank Act might more efficiently address the same objectives targeted by credit risk retention requirements.

A subsequent recommendation advises the Agencies to consider that capital markets are dynamic and should remain so; periodic adjustments to the rules may be necessary to ensure they remain effective and do not provide undue incentives to move intermediation into other venues where requirements are less stringent or may not apply. The study further notes that an undesirable outcome would be the migration of securitization activity to unregulated entities or offshore jurisdictions that generate less information to investors and provide less transparency to regulators. We strongly support this guidance and believe that accurate disclosure of information

to investors, clear oversight by regulators and appropriate responsibility by transaction parties continue to be effective features of sound securitization markets. In light of the significant benefits provided by securitization, the guiding recommendations above and our role as a leading participant in the industry, we urge the Agencies to consider our views on credit risk retention.

We have been advised that the Securities Industry and Financial Markets Association (SIFMA), the Financial Services Roundtable and the American Bankers Association, the Commercial Real Estate Finance Council (CREFC), the Loan Syndications and Trading Association and the Association for Financial Markets in Europe (AFME) are submitting comment letters describing the position of the many originator, sponsor and dealer institutions that comprise their memberships. We are contributing members of these groups and would like to support their general views. In addition, we describe below areas where we believe we can provide additional color on important issues. We invite each of the Agencies to contact us to discuss in further detail the topics herein or those otherwise addressed in the re-proposal.

RMBS

Blended Pools

While Section 15G allows for full exemption for securitizations backed solely by qualified residential mortgages (QRMs), this does not preclude the Agencies from invoking their power to provide partial exemptions as may be appropriate to ensure high quality underwriting standards for securitizers and assets, encourage appropriate risk management practices by securitizers and originators of assets, improve the access of consumers to credit on reasonable terms, or that otherwise may be in the public interest and for the protection of investors. The Agencies note in the re-proposal that allowing blended pools with reduced risk retention will improve efficiency, competition and capital formation. We support this view and believe it applies to the residential mortgage asset class.

A partial exemption would allow sponsors to securitize a large pool of blended residential mortgages (i.e., QRM and non-QRM) loans when it is not possible to securitize enough qualifying assets to issue RMBS that is able to achieve full exemption from risk retention. The securitizer should be required to hold credit risk in proportion to the non-qualifying assets, but not with respect to the qualifying assets. Therefore, the aim of risk retention would be achieved because the pool would only consist of qualifying assets and those against which the securitizer is willing to retain credit risk. The practical result of adopting a blended pool option for residential mortgages would likely be increased origination of loans very close to the characteristics of QRMs. Consequently, this would help reduce the stigma of non-QRMs and the potential cliff effect of the binary QRM/non-QRM construct.

In addition, there should not be a minimum retention amount above that equal to 5% of non-qualified assets. If implemented, sponsors will be incentivized against financing high quality loans that fall just outside of the QRM characteristics. We request that the required retention for any blended pool be in direct proportion to the amount of non-QRM loans contained in such pool.

Sunset on Hedging and Transfer Restrictions; Seasoned Loans

We do not believe that it is necessary or prudent to require securitizers to retain risk for more than three years into the life of the securitization or that appropriately seasoned loans should be subject to risk retention. As noted above, the Agencies are permitted to provide exemptions, including those for seasoned loans. Under Section 15G, the Agencies have discretion to decide the "minimum duration of the risk retention required". Clearly, legislators did not intend that retention would be required for the duration of a securitization's outstanding securities. The re-proposal states that "the primary purpose of risk retention - sound underwriting - is less likely to be effectively promoted by risk retention requirements after a certain period of time has passed and a peak number of delinquencies for an asset class has occurred".

We believe that to the extent effective, any incentive desired by risk retention can be achieved in a few years. We do appreciate the reduced sunset period of transfer and hedging restrictions and loan seasoning when compared to the original proposal, but believe the periods set forth in the re-proposal are still too long. In many RMBS transactions, the sunset period for representations and warranties has been limited to three years. While most transactions include representations and warranties without a sunset period, the industry has recognized three years as an appropriate period for credit underwriting issues to arise.

In fact, the FHFA has developed a framework for representations and warranties whereby lenders are relieved of certain repurchase obligations for loans after 36 months of on-time payments. This timeline is designed to capture substantive underwriting and documentation deficiencies. We believe it is appropriate to analogize this guidance to the restrictions on hedging and transfer and the minimum period for loan seasoning in order to achieve an exemption because these are, respectively, targeted to expose securitizers to credit risk and ensure suitable seasoning has occurred such that any underwriting and documentation deficiencies are uncovered.

It is not necessary to require securitizers to become investors for an inappropriate period of time on transactions where they act as responsible intermediaries. In the limited cases where risk retention is perceived as necessary to align incentives, the duration of the mechanism need only last long enough to achieve its aim in an effective manner. Exposing securitizers to credit risk beyond a period that may reveal underwriting and document deficiencies forces other economic factors and uncertainty on to market participants. Investors accept credit risk based on

the expected return offered and should be comfortable that proper underwriting and accurate disclosure is given. Risk retention should not be used to allocate credit risk to securitizers outside of poor underwriting issues.

Permissible Retention Form and Originator Hold

The allowance of risk retention by originators is appreciated, but implementation of the requirements in the re-proposal would prove difficult. If multiple originators are willing to retain risk, it would make sense for them to be comfortable with the loans they contribute. It doesn't follow that they would retain risk for loans originated by other parties. They also may not be able to hold risk in the form of securities. The diligence required by one originator in a multi-seller ABS transaction would be unduly burdensome, subject financial institutions to credit risk they can't control and therefore severely limit the availability of credit. The market should be satisfied that the parties responsible for origination of certain loans are willing to accept the credit risk of the loans they are contributing.

We therefore request that the party retaining risk be allowed to hold either a representative sample of the loans sold or a participation interest. We also believe the removal of the representative sample option and exclusion of participation interests in loans for single seller deals is problematic. The representative sample option is a retention method commonly used by insured depository institutions subject to the FDIC's safe harbor rule. Further, loan participations are an established practice that should be allowed at the retainer's option to truly hold a portion of the credit risk of a loan pool. These market tested practices should be utilized.

Depositor Certification

The re-proposal requires that a certification be made by the issuer of ABS backed solely by QRMs within 60 days prior to the related cut-off date and that a copy must be delivered to prospective investors. We acknowledge that Section 15G requires this certification by the issuer, but we believe it is unnecessary to deliver this to investors due to the already existing liability of an issuer that discloses the nature of the assets in the pool and their satisfaction of the risk retention rule. The offering documents will detail the loans characteristics, creating a basis for disclosure claims by investors. Further, if all assets are not QRMs and the issuer is relying on the QRM exemption, there is already a cure for non-compliance through repurchase. Delivery of a certification to investors creates additional liability and is functionally burdensome. We believe that in order to address these issues, the certification should be submitted to the SEC.

QRM

We support the proposed adoption of the qualified mortgage definition issued by the CFPB as the definition of a QRM. Ability to repay regulations and lender oversight belong at the CFPB level to protect consumers and ensure prudent lending. We do not support any down

payment minimum as a component of the QRM definition. A down payment requirement was not the legislative intent of the drafters of Section 15G, as indicated by letters submitted by members of Congress to the Agencies. Additionally, many market participants have indicated that any minimum down payment requirement would disproportionately and adversely impact low and moderate income families, especially those looking to borrow in order to finance the purchase of a home, rather than to refinance an existing loan.

We note that the alternative QRM proposal (QM-plus) would call for a loan-to-value (LTV) at closing that does not exceed 70% (i.e., a down payment of 30% would be required). Junior liens would be permitted only for non-purchase QRMs, and must be included in the LTV calculation if known to the originator at the time of closing, and if the lien secures a home equity line of credit or similar credit plan it must be included as if fully drawn. Below is a table that illustrates agency mortgage loans originated for each month this year and for the year-to-date the percentage of purchase originations that have an LTV below 70% and the percentage of refinance originations that have a combined-LTV (inclusive of second liens) of below 70%. Clearly, purchase originations with LTVs below 70% have been a fairly small percentage of total originations this year, averaging just below 14% YTD. Refinance originations with combined-LTV below 70% have been somewhat higher at less than 38% YTD. Based on this data, we believe that if adopted the LTV requirements of QM-plus would significantly restrict the number of loan originations that qualify for the QRM designation.

Vintage	Purchase Originations Below 70% LTV	Refinance Originations Below 70% LTV
Jan	13.85%	38.08%
Feb	13.23%	38.58%
Mar	14.40%	39.19%
Apr	14.11%	36.78%
May	13.27%	35.00%
Jun	13.98%	38.42%
Jul	14.28%	38.87%
Aug	13.89%	35.80%
Sep	14.04%	34.36%
Oct	14.99%	43.22%
YTD	**13.93%**	**37.67%**

Finalizing a definition of QRM that includes the additional proposed criteria in the QM-plus portion of the re-proposal would injure the rehabilitation of the private label RMBS market, ceding market share to the GSEs. The policy and operational arguments against the QM-plus approach are numerous. An economic fact is that the vast majority of borrowers expected to constitute a healthy origination population for QRMs do not possess the 30% down payment proposed in the QM-plus requirements.

If the QM-plus criteria are adopted as the QRM definition, the market for buyers of loans that are not QM-plus would be limited because securitizing non-QRM loans requires risk retention by the sponsor, which in turn increases the costs of the transaction. Sponsors of

securitizations would find QRM loans more desirable, dividing the market within QM loans. QM loans that are not QM-plus will be more expensive to the consumer. Another practical impact is that alignment with the QM definition will be beneficial because it provides clarity and certainty for lenders. Lenders will be highly incentivized as of January 10, 2014 to originate loans that meet the QM definition and will develop underwriting criteria and build out origination platforms designed to meet these standards.

With the increased lending standards imposed by the ability-to-repay rules, even absent any additional requirements for securitization credit risk retention exemption, lenders and securitizers are under increased scrutiny from regulators and investors. These parties take on a degree of assignee liability through the financing and sale of mortgage loans. Additionally, while an imperfect historical incentive mechanism, repurchase obligations have taken on greater importance in transaction documents; standards for breaches and cures have been clarified greatly. An obligation to repurchase loans if their characteristics do not match representations is akin to full risk retention. Investors are increasingly diligent in pursuing repurchase claims and the new reporting requirements under the SEC's Rule 15Ga-1 have raised the transparency of securitizers' repurchase record.

CMBS

The Agencies have requested comments about the requirements included in the qualified commercial real estate (QCRE) loan exemption, their appropriateness and reasoning. Further, the Agencies have requested comment on the proposed underwriting standards, including the proposed definitions and documentation requirements. Barclays has taken part in many aspects of the rejuvenation of the commercial mortgage backed securities market as an active CMBS loan originator, seller, issuer and bond underwriter. As a financing source for borrowers, a sponsor of many post-crisis CMBS securitizations and with a leading CMBS research team, Barclays can provide meaningful market data and insight on the approach taken by regulators with respect to the risk retention requirements related to CMBS.

The QCRE definition should be revised

The Agencies note in the re-proposal that although commenters were concerned that few CMBS issuers will be able to use the QCRE exemption, the Agencies are keeping many of the same underwriting characteristics for the reasons discussed at the beginning of Part V of the re-proposal. The beginning of Part V states that homogeneity in the securitized residential mortgage loan market is dissimilar to the securitization market for commercial real estate loans and that the additional complexity needed to create underwriting standards for every major type of business in every economic cycle would be so great that originators would be dissuaded from attempting to implement and stay abreast of revisions necessary from time to time. We believe that the criteria provided can be revised to encapsulate a healthy portion of well underwritten,

quality commercial real estate loans across economic cycles without the need for any more periodic revisions than would be required for residential mortgages.

The definition of QCRE loan should be widened to include the higher credit quality loans we are already securitizing. As shown in the table below, the proposed QCRE definition with respect to debt service coverage ratio (DSCR), interest only (IO), term, amortization spread test and LTV would cover at best 2% of the CMBS loans securitized since the beginning of 2011, a period during which lending standards have significantly improved as compared to pre-crisis standards. There are additional criteria within the proposed definition of QCRE that are difficult to track for statistical purposes. If all of the other detailed proposed QCRE criteria were included in our analysis beyond those enumerated above and the chart below, the percentage of QCRE loans would likely be substantially below 2%.

			Each test assumes passing of previous test				
Vintage	Property type	Original balance	Meets DSCR test	Not IO	>=10yr	Amortization speed test	LTV Test (TOTAL PASSING ALL TESTS)
2011	Multifamily	1,679,856,750	66%	47%	27%	27%	3.8%
	Office	6,190,135,047	49%	35%	22%	0%	0.5%
	Retail	9,595,117,692	43%	32%	25%	1%	0.3%
	Industrial	709,805,000	64%	58%	44%	13%	4.2%
	Hotel	2,658,199,550	54%	43%	17%	13%	2.5%
	Other	3,053,622,315	19%	8%	8%	0%	0.1%
2012	Multifamily	2,181,492,010	80%	48%	40%	40%	6.0%
	Office	9,460,151,250	72%	33%	27%	1%	0.1%
	Retail	11,620,171,587	77%	40%	36%	5%	1.4%
	Industrial	1,432,672,090	72%	57%	40%	18%	4.1%
	Hotel	4,641,651,500	73%	60%	42%	28%	12.1%
	Other	5,065,736,197	36%	14%	12%	1%	0.6%
2013	Multifamily	3,038,423,115	75%	35%	33%	32%	3.1%
	Office	6,538,608,500	80%	29%	24%	5%	1.0%
	Retail	10,179,304,541	77%	30%	27%	4%	0.5%
	Industrial	1,313,049,500	80%	61%	53%	26%	21.4%
	Hotel	4,434,821,250	73%	62%	47%	26%	7.3%
	Other	5,992,312,886	36%	18%	17%	3%	1.7%
	Total	$89,785,130,780	63%	35%	28%	9%	2%

The criteria in the QCRE loan definition that are considerably more stringent than prudent commercial mortgage lending standards will render the exemption impractical for most securitizers. Unworkable standards will have to be ignored. Conversely, a realistic QCRE definition that considers the lending standards of high quality loans actually being originated today will have a positive effect on lending standards as there will be a reasonable ability and incentive to lend to such standards. We generally support the QCRE definition proposals set forth in the CREFC letter to you, which reflects a dialogue between investors and CMBS loan originators and issuers. We also believe that a QCRE definition should be crafted so as to

capture a loan universe similar to that captured by the proposed QRM standard. This would require additional changes even beyond that which CREFC has proposed. For example, while the CREFC letter does not address the proposed LTV and DSCR thresholds, we believe the LTV threshold should be 70% and the DSCR thresholds should be lower than the proposed thresholds (1.4x for property types excluding hotels, 1.5x for hotels).

Single Borrower, Single Loan CMBS should be provided a reasonable exemption

The definition of QCRE loan or the overall risk retention rules should exempt or accommodate single borrower securitizations as they are commonly and currently structured because (1) the information provided to investors to make their investment decision is extremely voluminous and transparent and (2) the aggregate loss track record for pre-crisis and post-crisis single borrower securitizations has been outstanding (see chart below).

Vintage	Original Balance	Losses	Loss Severity
1993	118,893,329	-	0.00%
1994	521,066,691	-	0.00%
1995	534,148,374	-	0.00%
1996	2,998,295,329	-	0.00%
1997	1,935,691,691	-	0.00%
1998	1,688,352,686	-	0.00%
1999	2,593,687,444	-	0.00%
2000	3,750,532,855	3,580,157	0.10%
2001	9,707,115,751	272,536	0.00%
2002	2,583,823,945	3,395	0.00%
2003	3,720,675,210	-	0.00%
2004	5,183,325,000	-	0.00%
2005	12,225,329,700	-	0.00%
2006	11,296,778,330	934,096	0.01%
2007	13,807,901,391	-	0.00%
2009	1,360,000,000	-	0.00%
2010	6,947,990,100	-	0.00%
2011	4,693,194,582	-	0.00%
2012	9,128,506,326	-	0.00%
2013	16,838,193,878	-	0.00%
Total	111,633,502,611	4,790,184	0.00%

Without a revision to the re-proposal, loans that are too large for multi-borrower securitizations, such as loans secured by large high quality properties or large portfolio loans that benefit from cross-collateralization, will be significantly more expensive for borrowers, if attainable at all. Thus, large loan borrowers would have more limited access to credit and there would be very little benefit to investors given the outstanding CMBS single borrower loss severity track record dating back to the inception of CMBS in 1993.

One basis for risk retention is alignment of incentives against a backdrop of information asymmetry. In the case of single borrower commercial real estate loans, investors have access to significantly more information about the borrower, property, markets and loan terms than for loans included in securitizations with multiple loans. We support the request for exemption for single borrower securitizations set forth in the CREFC letter to you, and again note that their advocacy here reflects a dialogue between investors and CMBS loan originators and issuers.

Permissible Retention Form

Any vertical interests retained should also be permitted to be retained through loan participations held by the originator or seller for its respective loans, not just in combined pool bond form. Regulators and investors should be satisfied that the parties responsible for origination or sale of the loans, as originator or seller, are comfortable with the loans they are contributing and vertically retaining. CMBS multi-borrower structures are unique in that there are generally multiple sellers. A singular combined vertical bond retention approach would be unduly burdensome. For example, if there are five loan sellers, five loan sellers would have to conduct due diligence on four other sellers' loans, thus having each loan subject to the due diligence of five lenders or sellers. A single seller model, which the current proposal would encourage, would result in less diverse pools and subject loan sellers to lengthy pool aggregation market risk, which would both increase the cost of financing for borrowers and subject banks and other financial institutions to unnecessary new market risk. Furthermore, smaller lenders would not have access to the CMBS market due to the inability to aggregate sufficient loans for a single seller pool, thereby further reducing borrower access to capital.

Closing Date Projected Cash Flow Rate Compared Against Closing Date Projected Principal Prepayment

The re-proposed rules require a retainer of risk to certify to investors that with respect to any eligible horizontal residual interest, the Closing Date Projected Cash Flow for each payment date does not exceed the Closing Date Projected Principal Repayment Rate for such payment date. As discussed in the CREFC letter and many other comment letters, as currently calculated, the definitions are too restrictive. The contours of this calculation is a non-starter for B-piece buyers and would render the B-piece buyer retention alternative largely impractical. It is important that this section of the rules is harmonized with the economic realities of the CMBS market.

Senior/Subordinate Structure for B-Piece Retention

Requiring up to two B-piece buyers to retain the bottom 5% of proceeds on a horizontal pari-passu basis rather than on a senior/subordinate basis will significantly increase the cost of capital for borrowers and more importantly reduce the availability of capital. Investment grade

buyers and traditional B-piece buyers have different yield targets and credit needs. Traditionally, B-piece buyers have purchased only bonds below investment grade and demanded yield commensurate with such risk. Requiring the same buyers to also purchase investment grade bonds will simply increase the cost of capital for borrowers without measurable benefit to investors. We support the suggestions set forth in the CREFC letter to you with respect to proposed guidelines for allowing two buyers to hold on a senior/subordinate basis, which reflects a consensus among investment grade investors, B-Piece buyers and CMBS loan originators and issuers.

ABCP

We thank the Regulators for their evident willingness to provide workable solutions for the asset-backed commercial paper (ABCP) market and appreciate the attempt to create a balanced risk retention method for ABCP. We have been advised that the Structured Finance Industry Group (SFIG) and SIFMA are including in their comment letters specific sections regarding ABCP. We are contributing members of these groups, have noted above our support for the SIFMA letter and would like to specifically endorse the ABCP portion of the SFIG letter.

The collective comments include recommendations with respect to the re-proposal that: the permitted business activities of an Eligible ABCP conduit, including the types of assets permitted in an ABCP conduit, are too limited and do not reflect current market practice; the requirement for 100% liquidity coverage not subject to credit performance of the underlying assets is inconsistent with general risk retention requirements; there should be no limit on the number of liquidity providers as long as at least 100% of liquidity is provided by one or more regulated liquidity providers; the requirement to disclose fair value is unduly burdensome; the proposed monitoring and disclosure requirements for conduits are burdensome and unnecessary; the tenor limit for ABCP should be extended to at least 397 days given Basel rules for the Liquidity Coverage Ratio and the Net Stable Funding Ratio; and Legacy ABCP conduit assets should be grandfathered at least until the associated contractual commitments expire or are otherwise amended or extended. We describe below areas where we believe we can provide additional information on important points.

According to the re-proposal, the Agencies seem to agree that fully-supported ABCP programs (where liquidity coverage is not subject to credit performance of the underlying assets) provide sufficient risk retention. We agree. We also believe that partially-supported ABCP programs with the following characteristics fully satisfy the risk retention requirements of Section 15G:

- Banks or other regulated financial institutions provide backstop liquidity commitments at least equal to 100% of all outstanding commercial paper limited to performing assets;

- A bank or other regulated financial institution provides a letter of credit, as unconditional program wide credit enhancement (PWCE), equal to at least 5% of the ABCP conduit's assets;
- Originator-sellers provide at least 5% risk retention for each transaction in the conduit (consistent with Article 122a of the EU Commission Directive 2010/16/EU); and
- The ABCP conduit incorporates structural features in order to mitigate exposure due to potential deterioration of the underlying portfolio, for example, wind down triggers and cease purchase triggers.

PWCE is appropriate in the above criteria because it is used to repay ABCP investors for any amounts not covered by the liquidity facility on the same date that commercial paper matures. It is important to distinguish this support from those used in SIVs and other structures no longer in the market. PWCE will fund immediately regardless of the liquidity or marketability of the underlying assets. PWCE is fungible across all transactions in the underlying portfolio, so in the case that losses in a transaction exceed the enhancement provided by the originator-seller, the total PWCE in the conduit will be used to repay ABCP investors. Finally, a reduction in PWCE below its minimum requirement constitutes a cease issuance event and an ABCP conduit will not be able to sell or renew any commercial paper unless PWCE is replenished to at least its minimum required level.

We strongly believe, and we agree with the view expressed by ABCP investors, that the small exposure by investors to the performance of the underlying assets provided by partially-supported ABCP programs gives them a diversification benefit that is not available in a fully-supported ABCP program. Fully-supported ABCP programs are effectively 100% risk to the banks or institutions providing the backstop liquidity. If these programs need to be converted from partially-supported to fully-supported ABCP programs, investors in unsecured paper issued by these sponsors will have to decrease their participation due to concentration limits. Such a change would have a significant impact on the funding for ABCP programs.

Foreign-related Transactions

While the re-proposed rules provide a limited safe harbor for foreign-related transactions, we believe it does not fully address the issues posed by cross-border transactions. We would like to note our support of AFME's comment letter on this issue and reiterate that a mutual recognition scheme should be adopted. This would allow issuers and other market participants that have confirmed compliance with the regulations of a recognized jurisdiction to avoid the significant costs of evaluating and, if even possible, implementing changes to conform to multiple risk retention regimes.

Conclusion

We continue to believe that the final credit risk retention rules should complement other regulatory initiatives to encourage measured credit extension to borrowers. Securitization has proven an efficient financing product for consumers and businesses, contributing a key source of credit in the economic recovery. We request that the Agencies carefully consider the potentially negative effects on lending imposed by impractical credit risk retention rules.

We thank the Agencies for considering these comments and appreciate the opportunity to provide input on this important process. Please feel free to contact me at (212) 526-3073 or scott.wede@barclays.com with any questions or follow up related to the content of this letter. Thank you for your consideration of our comments.

Sincerely,

Scott Wede
Managing Director, Global Head of Securitized Products Trading
Barclays