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Re: Credit Risk Retention; Proposed Rule; SEC File No. S7-14-11, Release No. 34-70277; FRB Docket No. R-1411; OCC Docket No. OCC-2013-0010; FDIC RIN 3064-AD74; FHFA RIN 2590-AA43; HUD RIN 2501-AD53

Ladies and Gentlemen:

CarMax, Inc. ("CarMax") appreciates the opportunity to comment on the joint re-proposed rules (the "Re-Proposed Rules") pertaining to credit risk retention by securitizers of asset-backed securities ("ABS"). We have twice before joined with other securitizers of vehicle and equipment loans in providing comment on prior incarnations of the Re-Proposed Rules[1], and we are members of the Auto and Equipment Committee of the Structured Finance Industry Group, which has submitted a comment letter to you (the "Agencies") on or about October 30, 2013 (the "SFIG Letter"). As when we wrote separately to the Securities and Exchange Commission on August 2, 2010[2], we write to you now to express our support for the positions taken in the industry group letter and to provide our views on certain matters in more detail. We very much appreciate the attention that the Agencies have clearly given to these earlier letters

[1] Group comment letters dated August 2, 2010 and August 1, 2011 are available at http://www.sec.gov/comments/s7-08-10/s70810-136.pdf and http://www.sec.gov/comments/s7-14-11/s71411-287.pdf, respectively.
[2] Our comment letter dated August 2, 2010 (herein referred to as the "2010 Letter") is available at http://www.sec.gov/comments/s7-08-10/s70810-135.pdf.

and we hope that our comments below will provide the Agencies with a clear understanding of the issues affecting vehicle ABS issuers like us.

CarMax is the nation's largest retailer of used vehicles. As of August 31, 2013, we operated 123 used car superstores in 61 markets. As of February 28, 2013, we employed over 18,000 full- and part-time associates in our stores, our home office in Richmond, Virginia, and at our finance operation, CarMax Auto Finance ("CAF"), in Atlanta, Georgia. During our fiscal year ending February 28, 2013, we sold 447,728 used vehicles at retail. CAF provides financing for approximately 40 percent of our retail customers, and as of August 31, 2013, CAF serviced approximately 498,000 customer accounts in its $6.68 billion portfolio of managed receivables.

We obtain short-term funding for auto loan receivables originated by CAF through two warehouse facilities each comprising several bank and/or asset-backed commercial paper conduit investors. Our long-term funding strategy includes the use of term issuances of ABS for permanent funding. Since 1999, we have publicly or privately issued ABS in 35 transactions, which have been backed by pools of collateral in an amount over $23 billion. We view access to the securitization markets as an important piece of our funding strategy in our effort to make competitive financing available to our retail customers.

We believe that the revisions and modifications contained in the Re-Proposed Rules are an important step toward a final rule that will accomplish the mandate to the Agencies under the Dodd-Frank Act while minimizing negative impacts to the securitization markets. Most notably, and as we will discuss further below, we view the change from a par value measurement of the Eligible Horizontal Residual Interest to a fair value measurement as a vital change toward a workable rule. However, we do think the Re-Proposed Rules introduce several unintended consequences that could be damaging to the market, its participants, and ultimately to consumers. We write to you to illustrate these issues and to suggest alternatives that would improve the functioning of the securitization markets, rather than impede them.

Fair Value Measurement for Eligible Horizontal Residual Interests

As we wrote in the 2010 Letter, CarMax has retained a subordinated residual interest for each of its securitization transactions. This interest is entitled to excess cash flows for each month of the life of the transaction after fees are paid to service providers (including the servicer and trustees) and principal and interest entitlements for that month are paid in full to investors. If the collateral underlying a securitization suffered losses, these excess cash flows would be reduced to zero before any shortfalls would be allocated to investors. The par value approach proposed in the original rulemaking would not have included these retained interests in calculating the risk retention percentage, ignoring the true protection from loss that excess spread provides investors.

As such, CarMax applauds the Agencies' decision to move away from a par value approach and instead propose a fair value approach for measuring Eligible Horizontal Residual Interests ("EHRIs") that would take excess spread into account in determining issuers' risk retention obligations. We further commend the Agencies for their proposal that the calculations necessary to compute the value of an EHRI be conducted only at closing and not on an ongoing

basis, as we believe it is important for market participants to know the terms of a transaction (including any retained interests by the securitizer) with certainty at or before closing.

That said, as is discussed at more length in the SFIG Letter, utilizing a fair value approach does present difficulties in calculation and measurement that must be addressed clearly for issuers and investors alike to be comforted in the determination that a particular retained interest meets the issuer's risk retention obligations. We hope the Agencies will consider these difficulties and revise the rule in a way that would make its compliance more workable for market participants without disrupting existing practices that have worked well prior to, during and after the financial crisis. Most problematically, the repayment restrictions implemented by calculation of the Closing Date Projected Cash Flow Rate and the Closing Date Projected Principal Repayment Rate institute a risk retention obligation that is greater than 5 percent for transactions with large amounts of excess spread. In our minds, this is a requirement that exceeds the Congressional intent implied under Section 941 of the Dodd-Frank Act. Further, the disclosure requirements contained in the Re-Proposed Rules may be impossible to comply with and, even with changes that would make compliance possible, could subject issuers to liability and deter the use of EHRIs to meet the risk retention obligation. Below, we discuss these issues.

Proposed Repayment Restrictions Unfairly Penalize Excess Spread

We understand the Agencies' desire to prohibit securitizers from intentionally structuring a transaction to immediately (or quickly) repay themselves the value of any retained interests. However, the restrictions on repayment accomplished by the proposed Closing Date Projected Cash Flow Rate and Closing Date Projected Principal Repayment Rate ratios cause serious negative consequences for transactions featuring large amounts of excess spread. Sponsors of securitizations like CarMax's recent transactions, which have featured large amounts of excess spread at closing, may value their retained interests at significantly greater than 5 percent of the fair value of all ABS interests issued as part of the transaction. Accordingly, if sponsors are prohibited from repaying themselves at a faster rate than investors, those sponsors retaining a greater percentage at closing in the form of excess spread would be prohibited from decreasing the amount retained—even if such decrease would still result in retaining greater than 5 percent of the transaction's credit risk.

We believe that regulatory efforts to ensure that issuers maintain "skin in the game" should not focus on comparing the amounts of payments made to the residual interest to those made to investors, but rather on the character of those payments made to the EHRI holder. We believe that as long as the only payments that can be made to an EHRI represent excess spread that is not needed to pay investors their contractual entitlements for a given month, there should be no need to make any ongoing calculation. We appreciate the difficulties in devising a rule that can be clearly applied to several asset classes, but at the same time prevent the engineering of new structures that defeat the substance of the rule, and we hope that the Agencies will revise the proposal to accomplish these goals without unnecessary consequences to transactions like ours.

Proposed Fair Value Disclosures Introduce Major Obstacles to Compliance

We agree with the Agencies on the importance of choosing appropriate and realistic assumptions to conducting a discounted cash flow valuation, and we can understand why the Agencies would want to institute a way for the assumptions chosen by issuers in conducting the required fair value analysis of EHRIs to be subject to some sort of supervision. However, we see two main obstacles to compliance with the proposed disclosure requirements contained in the Re-Proposed Rules—one regarding potential liability to the issuer for disclosing those assumptions and one regarding the impossibility of disclosing certain items that cannot be calculated prior to the time of sale.

Some of the disclosures regarding EHRIs that would be required by the Re-Proposed Rules present serious issues that could seriously discourage issuers from using this form of risk retention. Most importantly, the requirement that assumed default and recovery rates be disclosed would effectively provide investors with the loss assumption that the issuer expects to occur on the related asset pool. These assumptions are not only proprietary information, based on issuers' own expertise for underwriting and servicing receivables, but could subject issuers to significant securities law liability should they prove incorrect.

Investors must be required to perform their own credit analysis in determining whether to make an investment in a particular ABS transaction, rather than rely on the assumptions and expectations of the issuer. We do not believe that the sole use to investors of these types of disclosures would be to verify that the issuer has chosen reasonable assumptions in calculating their required retained interest—rather, we believe investors would naturally view the disclosed loss assumption as being the issuer's own expectations for the pool, and make decisions accordingly. We consider the threat of litigation surrounding the disclosure of an issuer's loss assumption as the most serious unintended consequence contained in the Re-Proposed Rules and we hope that the Agencies will eliminate this disclosure requirement.

In addition, we believe there are significant timing issues in the proposed rule relating to the inputs to the fair value calculation that would need to be disclosed to investors in advance of the time of sale. One input that is required to perform a discounted cash flow analysis in this context is the set of coupon rates for each of the obligations issued and offered to investors, since payments to the EHRI cannot be calculated until it is known how much cash is left over after paying investors. As such, it is impossible to conduct the fair value analysis described in the Re-Proposing Release until <u>after</u> pricing the transaction, well after the disclosures are proposed to be made to investors.

We suggest that a better way to ensure that issuers use realistic assumptions and proper methodologies in calculating their risk retention obligations is to require such information to be retained by the issuer and available for inspection for a specified period of time by the relevant Agencies at their request. Disclosure to investors of this information presents problems of liability and practicality that could invalidate the entire EHRI concept. Requiring issuers to make the calculations available for regulators would encourage them to make defensible assumptions and structure their deals so that they retain an appropriate amount of credit risk without running afoul of these two problems.

Further, we echo the SFIG Letter in requesting a safe harbor from liability for all fair value calculations as long as the methodologies and assumptions used to make such calculations are reasonable and made in good faith—otherwise, the threat of future litigation over any calculations, disclosed to investors or otherwise, regarding EHRIs could force issuers to rely on another form of risk retention (for instance, a vertical slice) and undermine the horizontal option described in the Re-Proposed Rules. We view the EHRI concept as one that could be tremendously valuable in aligning issuers' interests with those of investors if these few problems could be addressed in the final rulemaking.

Qualifying Automobile Loan Definition

We agree with the views expressed in the SFIG Letter regarding the Agencies proposed definition of Qualifying Automobile Loans ("QALs") in the Re-Proposed Rules. We are glad that the Agencies have recognized that there is a subset of all auto loans that should be exempted from risk retention obligations, but we believe that a few of the proposed requirements would eliminate nearly all loans underwritten today. We originate many low-risk, high-quality auto loans that we believe will perform extremely well, yet would fail to meet the standards set forth in the QAL definition. We hope the Agencies will modify the definition of QAL in the final rule so that issuers who securitize these low-risk, high-quality loans will be able to take advantage of the reduced retention obligation.

While we do not focus our underwriting decisions on DTI, we do believe it would be possible to capture this information if the requirement to verify income of our customers was eliminated. As stated in more detail in the SFIG Letter, auto loan originators do not generally require verification of income as is commonplace in mortgage lending. CarMax, like other auto lenders, relies on statements made on a customer's credit application and on credit bureau reports in conducting our underwriting process. If we were required to demand independent income verification of our customers, we would disrupt our existing sales processes, put substantial burdens on our customers, and find ourselves at a competitive disadvantage behind lenders who do not rely on the securitization markets for funding and would not need to perform any income verification.

In addition, we agree with the SFIG Letter that a minimum down payment is not necessary if the other criteria related to creditworthiness are required. We do not require a down payment for many of our customers with excellent credit, as these customers have displayed behaviors and history that show their willingness and ability to repay their obligations. Many of these customers, those who should be the very focus of the definition, would be disqualified solely because of the down payment requirement. Further, other underwriting standards focused on collateral, such as proof of insurance, are not commonly used by prime lenders because their focus is to find low-risk borrowers who are highly likely to repay their loans, rather than on maximizing recoveries for loans that are not repaid. For these reasons, we ask that the Agencies reconsider this criterion and instead rely on the other proposed measures of creditworthiness.

Conclusion

We believe that risk retention rules can be finalized in such a way that issuers like CarMax who retain meaningful economic interests in the form of excess spread in their securitizations of high-quality consumer loans can conduct their businesses without the unintended consequences that would result from the current proposal. We thank the Agencies for their work in improving the original proposals on credit risk retention and we hope that our comments assist in their further refinement toward a workable standard. We would be happy to discuss any of these topics in person, should any of the Agencies have any questions.

Sincerely,

CarMax, Inc.

By:

Thomas W. Reedy
Executive Vice President and
Chief Financial Officer