December 16, 2008

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

BY E-MAIL AND BY COURIER

Re: FDIC Proposed Rule on Assessments (RIN 3064–AD35)

Dear Mr. Feldman:

Thank you for this opportunity to comment on the Proposed Rule on Assessments that was published by the Federal Deposit Insurance Corporation on October 16, 2008 (the **Proposed Rule**). We submit this letter on behalf of the Securities Industry and Financial Markets Association[1] and the American Securitization Forum[2] through our joint U.S. Covered Bond Council.[3] While we will make some overarching comments on the Proposed Rule, this letter is

[1] The Securities Industry and Financial Markets Association (**SIFMA**) brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

[2] The American Securitization Forum (the **ASF**) is a broadly-based professional forum of participants in the U.S. securitization market. Among other roles, the ASF's members act as issuers, underwriters, dealers, investors, servicers and professional advisors working on securitization transactions. More information about the ASF and its members and activities may be found at the ASF's internet website, located at www.americansecuritization.com.

[3] The U.S. Covered Bond Council (the **USCBC**) is a collaborative forum sponsored by the ASF and SIFMA through which a diversity of market participants desire to promote a U.S. covered-bond market as a complementary and additional funding source for financial assets. Fundamental to the USCBC's mission is the development of market policies and practices that uphold public confidence in U.S. covered bonds to the benefit of issuers, investors and ultimately consumers and the public.

intended to primarily address our concerns about the Proposed Rule's impact on the U.S. covered-bond market.

Increasingly during the past year, covered bonds have been singled out by U.S. policymakers for their potential to be a stable and cost-effective source of liquidity for U.S. depository institutions and an instrumental tool in the broader effort to revitalize U.S. mortgage finance. The FDIC itself has taken a leading role in facilitating the development of this financial product by issuing its Interim Final Covered Bond Policy Statement in April and by following up with an even stronger Final Covered Bond Policy Statement in July. The Treasury Department also has demonstrated a firm commitment to the covered-bond market in the United States by publishing its own Best Practices for Residential Covered Bonds, which were praised not only by the FDIC but also by the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System.

Now more than ever, the deepening crisis in the housing market has highlighted the critical function that covered bonds can serve as an additional funding alternative. Fannie Mae and Freddie Mac have been placed into conservatorship, and private-label residential-mortgage securitization remains effectively frozen. Viewing this period as a potentially useful "time out," both Treasury Secretary Paulson and Federal Reserve Chairman Bernanke have urged all policymakers to reassess, in a holistic way, the manner in which our system of mortgage finance should connect homebuyers to the capital markets. In Europe – where no government-sponsored enterprises play a role – covered bonds have continued to supply substantial liquidity to the housing market, and convincing arguments can be made that they should form a central part of any reorganized system in the United States. As the FDIC and other banking regulators have noted, with so much of the current market dislocation being attributable to the underpricing of risks associated with opaque financial instruments, the simplicity of covered bonds and the incentives that they provide for fiscal discipline, strong underwriting, and sound risk management are attractive.

We believe, however, that the benefits offered by covered bonds in this new era of mortgage finance are threatened in a material way by the Proposed Rule. By increasing an insured depository institution's base assessment rate if its ratio of secured liabilities to domestic deposits exceeds 15%, the Proposed Rule would exact a penalty on any meaningful use of covered bonds or other secured borrowings to fund mortgage loans. The unfortunate result of such an approach, in our view, could be a further tightening of the liquidity that depository institutions can allocate to mortgage lending. This, of course, would run counter to every policy objective that the FDIC and other banking regulators have sought to advance in recent months.

We also are concerned that the proposed secured-liability adjustment misses its intended mark in a more fundamental way. If the FDIC is concerned about potential losses to the deposit insurance fund, the ratio of an institution's secured liabilities to its domestic deposits does not appear to add much predictive value when forecasting the assets that will be accessible to reimburse outlays by the FDIC. Rather, a ratio of unencumbered assets to domestic deposits would seem to be a far more relevant gauge. An even better indicator, in our view, would be the liquidity component of an institution's CAMELS rating. This is designed, after all, to specifically assess the availability of assets that are readily convertible into cash and other measures of an institution's liquidity that inform loss-given-default calculations and models.

We recommend, therefore, that the FDIC replace its proposed secured-liability adjustment with one that varies the level of assessment based on the liquidity component of an institution's CAMELS rating or, at the very least, its ratio of unencumbered assets to domestic deposits. To the extent that the FDIC is not inclined to adopt this recommendation and decides instead to retain the secured-liability adjustment in its current form, we would request that covered bonds be excluded from the definition of secured liabilities for a period of three years. A vibrant U.S. covered-bond market, in our view, can emerge and be sustained only if a consistent approach to its regulation is adopted by U.S. governmental authorities, and we have significant concerns that its growth in these early stages could be materially impeded by seemingly incongruous policies. A three-year moratorium, we believe, would provide enough time for reforms to our system of mortgage finance to take shape and for a deep and liquid covered-bond market to take root. We are convinced, moreover, that this approach would not expose the deposit insurance fund to any meaningful risk. The FDIC already has built into its Final Covered Bond Policy Statement a number of "prudential limitations" that are designed to protect the fund – most notably, the ceiling that precludes any institution from issuing covered bonds in an amount that exceeds 4% of its total liabilities.[4] Furthermore, in contrast to other secured borrowings that the FDIC views as deleterious to the value of a depository institution's franchise in the event of its failure, we believe that the unique benefits associated with a covered-bond program would generate a neutral to positive effect.

[4] 73 Fed. Reg. 43,754, 43,754 (July 28, 2008). On the 4% ceiling in particular, the FDIC observed: "The Policy Statement applies to covered bond issuances that comprise no more than 4 percent of an institution's total liabilities since, in part, as the proportion of secured liabilities increases, the total unpledged assets available to satisfy the claims of uninsured depositors and other creditors from the Deposit Insurance Fund decrease. As a result, the FDIC must focus on the share of an IDI's liabilities that are secured by collateral and balance the additional potential losses in the failure of an IDI against the benefits of increased liquidity for open institutions. The 4 percent limitation under the Policy Statement is designed to permit the FDIC, and other regulators, an opportunity to evaluate the development of the covered bond market within the financial system of the United States, which differs in many respects from that in other countries deploying covered bonds." *Id*. at 43,756.

Once more, we want to express our gratitude for this opportunity to comment on the Proposed Rule. If you have questions about any view expressed in this letter, please do not hesitate to contact us.

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cc: Hon. Ben S. Bernanke
Hon. John C. Dugan
Hon. Henry M. Paulson, Jr.
Hon. John M. Reich