OC 09-1419

American SECURITIZATION FORUM.

FDIC

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OFFICE OF THE CHAIRMAN

November 4, 2009

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Proposed Risk-Based Capital Rules Related to the Implementation of FAS 166 and FAS 167

Dear Chairman Bair,

Recent changes to accounting standards will require consolidation of a wide range of securitization transactions, including term structures and ABCP conduits. September's joint Notice of Proposed Rulemaking (NPR) sets forth the bank regulatory agencies' plans to apply risk-based capital charges to assets that will be consolidated on bank balance sheets because of FAS 167, and additionally removes an exemption relied upon by ABCP conduits.

The American Securitization Forum and its members have studied the proposal, and on October 15th submitted a comprehensive response to the NPR. ASF's response expresses a number of concerns with the one-size-fits-all approach to risk-based capital outlined in the NPR, and its significant, negative impact on the function of securitization markets, including the customer based multi-seller ABCP conduit industry.

We write this letter today to bring to your attention the concerns that have been expressed to us by the real-world customers of multi-seller ABCP conduits. One significant concern with the NPR is that, as proposed, it may lead to increased costs and decreased credit availability to users of customer based multi-seller ABCP conduits. These customer-based multi-seller ABCP conduits, as differentiated from other structures such as SIVs and securities arbitrage conduits, provide a vital source of financing for a broad array of companies in the U.S., and have proven to be stable and safe for their sponsoring banks for many years, including throughout the recent crisis. Users of these multi-seller conduits range from banks and other finance companies, to manufacturers, utilities, and main-street providers of goods and services to ordinary Americans.

Attached please find a letter that has been signed by more than 50 users of traditional, customer-based multi-seller ABCP conduits. This letter has been circulated to a number of members of Congress, and we thought it appropriate to share it with you as well. The letter expresses these firms' shared concern that the NPR is likely to have a significant, negative impact on a vital source of funding for their day-to-day business needs, and could therefore impact their ability to provide credit, goods, and services to their customers.

Please do not hesitate to contact me at 212-313-1116 or gmiller@americansecuritization.com should you have any questions, or if I may provide more information.

Sincerely,

George P. Miller

George P. Miller
Executive Director

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October 27, 2009

Dear Senator,

The undersigned businesses represent a significant number of customers of asset-backed commercial paper (ABCP) conduits administrated by U.S. banks. We write this letter because we are very concerned that recent regulatory proposals will threaten our access to this vital source of capital.

ABCP is an important source of short-term financing for many companies in the U.S. ABCP is similar to regular commercial paper. However, unlike commercial paper issued directly by corporations, ABCP is secured by financial assets, including traditional consumer assets such as credit cards and auto loans, and other assets such as business trade receivables. ABCP conduits are usually sponsored by banks, and serve to aggregate consumer and business assets from various lenders and other sellers of those assets and provide for efficient issuance of ABCP. These programs provide an essential source of short-term financing and liquidity to their customers – ABCP conduits provide over $500 billion dollars of vital capital to main street firms, who in turn extend financing to consumer and business borrowers. In some cases, these are companies that cannot otherwise access the corporate or securitized debt markets; in other cases ABCP is a way for large, well known companies to diversify their sources of funding and liquidity. Access to the capital that is provided by the ABCP conduits allows companies to operate on a day-to-day basis, as well as redirect this financing onward to their customers in the case of banks that utilize ABCP conduits. Thus ABCP conduits provide a key source of financing for our companies and to the economy as a whole.

Earlier this year certain accounting standards[1] dealing with transfers of assets and consolidation of variable interest entities were revised. The result of these changes for many U.S. banks will be the consolidation of their ABCP conduits onto their balance sheets. In September, federal banking regulators issued a notice of proposed rulemaking[2] dealing with the regulatory capital requirements related to these accounting standards changes. If the proposed regulatory capital rules are implemented without adjustment, regulatory capital requirements for U.S. banks that have consolidated their conduits will increase very significantly – to the point where the economics of the conduit programs will be jeopardized and the availability of the funding these conduits provide to our businesses will be threatened as the price of such credit will increase materially.

Banks that sponsor ABCP conduits will have two options in order to continue their operations, neither of which is positive for our businesses or our customers. First, the conduits may be forced to increase the costs of their financing. The second option is

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[1] FAS 166 and FAS 167, available here: http://www.fasb.org/cs/ContentServer?c=FASBContent_C&pagename=FASB%2FFASBContent_C%2FNewsPage&cid=1176156240834

[2] Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues, 74 Federal Register 107 (15 September 2009), pp. 47138-47148, available here: http://edocket.access.gpo.gov/2009/pdf/E9-21497.pdf

to simply reduce the availability of credit, providing financing to a significantly smaller number of businesses. Thus, at a minimum our cost of funds will increase, and in certain cases it is likely that we won't be able to get the credit we need to grow our businesses and create jobs.

Given the experiences of the last two years, we understand that regulators need to provide a sufficient capital cushion against risky activities to protect both institutions and taxpayers, and we strongly support efforts to strengthen the integrity of the infrastructure of our financial markets. However, traditional ABCP conduits have a 26 year history of providing safe, stable, and essential financing to a wide variety of middle-market and large U.S. companies, without causing undue risk or losses to their bank sponsors. We strongly believe that traditional, customer-driven ABCP conduits should not be lumped in with other financial vehicles that do not have such a direct link to real-world, main-street businesses and markets.

Furthermore, we are concerned that given the significant contraction in lending already evident in the economy, this regulatory action could undermine or forestall the nascent economic recovery. Therefore we ask that you reach out to the banking regulators, discuss these issues with them, and ask them to reconsider the substance and timing of their proposal in light of these concerns.

Sincerely,

Alliance Data
AmeriCredit Corp.
Amerisource Bergen
Arch Coal, Inc.
Automotive Rentals, Inc.
Ball Corporation
Cabela's/World's Foremost Bank
Capital Business Credit
CarMax, The Auto Superstore
Conn's
CONSOL Energy, Inc.
CR England, Inc.
Dean Foods
Donlen Corporation
Duke Energy Corporation
Emkay, Inc.
Enterprise Fleet Management, a division of Enterprise Holdings
Financial Federal Corporation
Financial Pacific Leasing
First National Bank of Omaha
FleetCor
Flextronics International LTD
Ford Motor Credit Company

Hallmark Cards, Inc.
Hertz
Hyundai Capital America
Jabil Circuit, Inc.
The John Buck Company
Klöckner & Co SE
Marlin Business Services Corp.
Meredith Corporation
Mike Albert Leasing, Inc.
Newell Rubbermaid Inc.
Nissan Motor Acceptance Corporation
NorthStar Capital Market Services, Inc.
Patterson Companies, Inc.
Porsche Financial Services
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Prestige Financial Services, Inc.
Schneider National, Inc.
The ServiceMaster Company
Sallie Mae
Tampa Electric Company, Inc.
Tenneco, Inc.
TriMas Corporation
UniGroup Inc. / Vanliner Insurance Company
USAA
WESCO Distribution, Inc.
Wheels, Inc.
World Omni (JM Family Enterprises)
YRC Worldwide
Ziegler Inc.