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BY ELECTRONIC MAIL (comments@fdic.gov)

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: *Advanced Notice of Proposed Rulemaking Regarding Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection with a Securitization or Participation after March 31, 2010*

Ladies and Gentlemen:

Fitch Ratings ("Fitch") submits this letter in response to the request for comments of the Federal Deposit Insurance Corporation (the "FDIC") on its December 15, 2009 Advanced Notice of Proposed Rulemaking Regarding Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection with a Securitization or Participation after March 31, 2010 (the "December 2009 ANPR").

While Fitch acknowledges the FDIC's legitimate desire to impose "certain conditions on securitizations designed to realign incentives[,]" we believe that such conditions ought to be clear and easily verifiable by any investor or other interested party at the outset of a transaction. Although much of the proposed rulemaking benefits investors, there are only a few provisions that are relevant to our credit ratings of securitization. Accordingly, with the exception of one comment regarding Section (b)(4)(i), Fitch limits its comments herein to the effect of the provisions contained in Addendum A to the December 15, 2009 ANPR, Sample Regulatory Text on the ratings of securitizations or participated loans by FDIC insured depository institutions ("IDIs").[1]

The ratings assigned by Fitch to securities issued from IDI sponsored securitizations are dependant upon the predictability of the treatment of the securitized assets in the event that the FDIC becomes the conservator or receiver of the IDI that transferred such assets in connection with the securitization. Current Rule 360.6 (the "Current Rule") specifies

[1] For ease of the readers, Fitch references securitizations only, but you should read our comments to apply similarly in the case of loan participations.

clearly defined conditions which, if satisfied, have the result the FDIC would not seek to repudiate contracts and reclaim transferred assets from the IDI in connection with a securitization. As a result, despite the possibility of the subsequent appointment of the FDIC as conservator or receiver of the transferring institution, the rights of the investors can be determined at the outset of the transaction. For securitization transactions that closed subsequent to the enactment of the Current Rule, if the transaction met the conditions set forth in the Rule, transaction counsel typically would provide a legal opinion that the FDIC, acting as conservator or receiver, could not, by exercise of its authority under Section 1821(e), reclaim or recover the transferred assets. The certainty provided by the terms of the Current Rule allowed Fitch to de-link the rating of securities issued in a securitization from those of the sponsoring IDI typically resulting in rating at least one class of the securities issued in the securitization higher than the rating of the IDI. Following recent changes to generally accepted accounting principles ("GAAP"), it is no longer possible for a securitization transaction to meet one of the conditions under the Current Rule. Accordingly, it has become necessary for the FDIC to revisit the Current Rule and its conditions.

As an initial observation, it appears from the Sample Regulatory Text that the FDIC is reserving its statutory authority to repudiate contracts and reclaim transferred assets upon its appointment as conservator or receiver, if the transfer of assets from the IDI does not satisfy the conditions for sale accounting treatment set forth in GAAP. Our understanding from the FDIC is that its intention in such instances is to (a) respect the security interest, if any, in the transferred financial assets, (b) consent to payment of regularly scheduled payments in accordance with the transaction documents during the relevant stay period, and (c) in the event of the FDIC's failure to pay damages pursuant to 12 U.S.C.§ 1821(e) within ten business (10) days from the date of notice of repudiation, provide secured creditors with the ability to exercise their contractual rights with respect to the securitized assets.

In order for a third party to have certainty as to the treatment of securitized assets under the proposed Rule, Fitch believes that three points should be further clarified, (i) the measure of damages payable in connection with any such repudiation, and for the purposes of all relevant matters being addressed on one statutory framework, (ii) the effect of the proposed Rule on prior statements by the FDIC where conflict could exist between such prior statements and the proposed Rule, and (iii) the effect if the safe harbor does not apply to a transaction.

If the conditions necessary to achieve the safe harbor are clearly delineated and a third party is capable of confirming the satisfaction of those conditions at the outset of the transaction, Fitch expects that law firms rendering legal opinions as to the application of the safe harbor can confirm that the conditions of the safe harbor have been met. Such a determination is necessary for Fitch to justify the de-linking of the ratings of securities issued in the securitization from the ratings of the relevant IDI, for example, the ability to assign a 'AAA' rating to securities issued in a transaction sponsored by an IDI with an issuer default rating from Fitch of 'A.'

Unfortunately, Fitch believes that the conditions to the safe harbor set forth in the Sample Regulatory Text are not sufficiently clear and a third party would not be able to confirm

that the conditions have all been satisfied at the outset of the transaction or have adequate assurances that the conditions will be met. Without the ability to confirm that the issuer has met the conditions of the safe harbor or adequate assurances that the conditions will be met, Fitch likely will not de-link the ratings of securities issued in the securitization from the ratings of the relevant IDI.

Some of the requirements currently contained in the Sample Regulatory Text appear to be qualitative and/or forward-looking, and therefore, make confirmation of the satisfaction of the conditions to the safe harbor challenging. For example, the language contained in Section (b)(3)(B)(ii) requires that for securitizations of residential mortgage loans "[t]he servicing and other agreements must provide servicers with the full authority…to mitigate loses on financial assets *consistent with maximizing the net present value of the financial asset,* as defined by a net present value analysis" (emphasis added). It is conceivable that opinions differ among servicers and third parties as to the methodology to maximize net present value, therefore, clarification as to how the FDIC will assess compliance with this condition would be beneficial. It would also be helpful if the FDIC provided further clarification of its position on the retention of the issued securities by an insider or affiliate as referenced in Section (c)(1) which reads "[t]he transaction should be arms-length, bona fide transaction, and the obligations shall not be sold *predominantly* to an affiliate or an insider" (emphasis added). In order for a third party to ascertain with certainty that the safe harbor will apply to a particular securitzation, a third party would need to know the meaning of predominantly. In the alternative, a provision that states that not more than a specified percentage can be sold to an affiliate or insider provides much greater clarity as to whether the condition has been met. Section (c)(7) requires that the IDI "properly segregate any financial assets and records that relate to the securitization from the general assets and records of the bank." Direction as to the type of segregation that the FDIC would expect to find would provide a standard by which a third party could ascertain compliance for purposes of determining that the safe harbor will apply to the securitization being considered.

Fitch also notes that unlike the conditions necessary to satisfy the Current Rule, the Sample Regulatory Text sets forth obligations that will continue after the closing of the securitization transaction, including reporting obligations (Sections (b)(2)(A)(i), (iii) and (iv)), recordkeeping obligations (Section (b)(3)(A)(i)) and retention of economic interest in the transaction by the Sponsor (Section (b)(5)(A)(i)). Fitch believes that the ability of the FDIC to look at ongoing conduct post-closing in order to determine whether the proposed rule would apply upon conservatorship or receivership weakens the reliability of the safe harbor and could result in ratings instability during the life of a transaction.

Finally, as to Section (b)(4)(i) of the Sample Regulatory Text, Fitch believes that the market should dictate the mechanics of compensation to the respective service providers. In that regard, Fitch notes that historically a portion of its compensation has been deferred, inasmuch as surveillance fees are paid annually over the life of the transaction. Finally, regardless of the payment mechanics, Fitch respectfully disagrees with the implied premise that payment of rating fees over time increases the quality of Fitch's work.

Thank you for giving us the opportunity to provide our comments. We hope you find them useful, and that you will give them due consideration. Please call me at (212) 908-0626 with any questions that you might have concerning our comments or if you wish to discuss this matter further at your convenience.

Very truly yours,

Charles D. Brown
General Counsel