REDWOOD TRUST

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July 1, 2010

Via Facsimile Transmission – comments@fdic.gov
Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments

RE: Notice of Proposed Rulemaking – 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 September 30, 2010

Dear Mr. Feldman:

This comment letter is submitted on behalf of Redwood Trust, Inc. ("Redwood Trust"), which is a publicly-traded company listed on the New York Stock Exchange. Through its wholly-owned subsidiaries (together with Redwood Trust, "Redwood," "we," or "our"), Redwood sponsors securitizations of residential mortgage debt (with a focus on the prime jumbo sector of this market) and retains investments in the securitizations it sponsors. In addition, Redwood is an investor in residential mortgaged-backed securities issued in securitizations sponsored by insured depository institutions and other third parties. As a result, Redwood has the perspective of both a sponsor of, and investor in, residential mortgage-backed securities.

In a separate comment letter Redwood has provided substantive comments regarding Paragraph (b) of the Proposed Rule.[1] The purpose of this comment letter is to raise an issue that is more technical in nature and which we believe should be addressed to avoid confusion regarding the scope of the Proposed Rule. In particular, and as further described below, the Proposed Rule should be clarified to confirm that a transfer of mortgage loans by an insured depository institution that meets all the conditions for sale accounting treatment under GAAP at the time of sale should not be at risk of subsequently being re-characterized by the FDIC as a secured financing.

[1] Capitalized terms used but not defined in this comment letter have the meanings ascribed in the Notice of Proposed Rulemaking.

We believe the Proposed Rule should be clarified to avoid any unintended consequences that could result from any perceived lack of clarity on the part of the rating agencies or otherwise. As noted in the Notice of Proposed Rulemaking, "the Securitization Rule has been relied on by securitization participants, including rating agencies, as assurance that investors could look to securitized financial assets for payment without concern that the financial assets would be interfered with by the FDIC as conservator or receiver." It is within the spirit of that statement that the following comment is submitted.

Paragraph (d)(3) of the Proposed Rule refers to any "securitization for which transfers of financial assets were made" and Paragraph (d)(4) of the Proposed Rule refers to any "securitization for which transfers of financial assets [were] made," and in each case these words (and the related defined terms) establish the scope of the Proposed Rule insofar as it relates to securitizations carried out after September 30, 2010. However, these words and the related defined terms are not explicit in clarifying one aspect of what we believe is the intended scope of the Proposed Rule.

Absent the clarification we describe below, we believe that the Proposed Rule could result in confusion with respect to the applicability of the Proposed Rule to securitizations that are sponsored by market participants that are neither insured depository institutions nor affiliates of insured depository institutions. Consider the following example:

> An insured depository institution sells residential mortgage loans to a non-affiliated third party that is neither an insured depository institution nor an affiliate of an insured depository institution. The sale of loans is made on a servicing retained basis – *i.e.*, the insured depository institution continues to service the loans subsequent to the sale. At the time of sale, the transfer of the loans is properly viewed under GAAP as a sale for accounting purposes (and thus, immediately following the sale, the loans are no longer reflected on the books of the insured depository institution).
>
> The third party purchaser then establishes a securitization trust and sponsors a securitization of the acquired loans in compliance with applicable regulations of the Securities and Exchange Commission, but not in conformity with all aspects of Paragraph (b) of the Proposed Rule. Consistent with the accounting treatment noted in the paragraph above, at the time the securitization is consummated the insured depository institution no longer includes on its books the assets now held by the securitization trust (as the insured depository institution's continuing role as servicer, by itself, does not result in consolidation).

> After the securitization is consummated (perhaps within a month or perhaps several years later) the insured depository institution that sold the loans (and that continues to service the loans), or an affiliate, purchases in the secondary market an amount of securities issued by the securitization trust that, when taken together with the insured depository institution's role as servicer of the securitized loans, results in the insured depository institution determining that under GAAP it is required to consolidate the assets and liabilities of the third party-sponsored securitization trust.

Under the example outlined above, there could be confusion under the text of the Proposed Rule. In the example, the transfer of the mortgage loan assets to the third party purchaser, which met all conditions for sale accounting treatment under GAAP at the time of sale, could arguably be subsequently re-characterized as a secured financing by the FDIC due to the subsequent open market purchase and related subsequent determination by the selling insured depository institution to consolidate the assets and liabilities of the securitization trust – even though those unilateral subsequent actions do not alter or impact the terms of the original sale transaction.[2]

To address this potential confusion, we believe that the Proposed Rule should be clarified to state that a sale of assets by an insured depository institution that is accounted for as such under GAAP at the time of sale, should not be re-characterized by the FDIC as a secured financing at a subsequent time if that re-characterization is premised upon a change in the accounting treatment of those assets by an insured depository institution that results from a subsequent change in circumstances that does not alter or impact the terms of the original sale transaction.

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[2] A review of a second example is also instructive. Consider circumstances that are the same as the example outlined in the text of this letter except that the insured depository institution included in that example does not subsequently consolidate the assets and liabilities of the securitization trust under GAAP (either because it does not act as a servicer or because it does not own enough of the securities issued by the securitization trust). In this scenario, the "Background-Analysis" section of the Notice of Proposed Rulemaking would seem to indicate that because there is not consolidation of the assets and liabilities of the securitization trust on the books of the insured depository institution, the FDIC would not generally consider re-characterizing the original transfer of mortgage loans as a secured financing, as this section of the Notice of Proposed Rulemaking states:

> An FDIC receiver generally makes a determination of what constitutes property of an IDI based on the books and records of the failed IDI. If a securitization is reflected on the books and records of an IDI for accounting purposes, the FDIC would evaluate all facts and circumstances existing at the time of receivership to determine whether a transaction is a sale under applicable state law or a secured loan.

This guidance should be made explicit in the context of, and should address, both (i) the example outlined in the text of this letter and (ii) the example outlined in this footnote.

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Absent such a clarification, the rating agencies and other market participants could be left in the position of not having certainty at the time assets are purchased from an insured depository institution as to whether future unilateral actions by the insured depository institution could alter the status of those assets under the Proposed Rule. This type of uncertainty could inhibit the market for asset sales by insured depository institutions, disrupting a source of funding for insured depository institutions.

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We appreciate the opportunity to submit comments on the Proposed Rule. You may direct any questions regarding this comment letter to the undersigned, who can be reached at 415-389-7373 or at andy.stone@redwoodtrust.com.

Sincerely,

Andrew P. Stone
General Counsel
Redwood Trust, Inc.