JPMorgan Chase & Co.

Adam M. Gilbert
Managing Director

<u>Via Electronic Mail</u>

July 1, 2010

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

Re: *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. (RIN 3064–AD53)*

Dear Mr. Feldman:

JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (collectively, JPMorgan) are pleased to provide comments on the above referenced notice of proposed rulemaking (NPR) published in the Federal Register on May 17, 2010.

As we noted in our comments on the preceding advanced notice of proposed rulemaking (ANPR) JPMorgan participates in virtually all aspects of the securitization process, including but not limited to: a) origination and servicing of loans; b) sponsoring, structuring and underwriting mortgage and asset-backed securities; c) market making; and d) investing. We believe being involved in as many aspects of the securitization business as we are gives us a balanced perspective.

We appreciate the FDIC's leadership in promoting regulatory reform of the securitization markets, especially home finance related securitizations. JPMorgan, however, continues to believe the safe harbor protection is not the most appropriate regulatory mechanism available to the FDIC to implement securitization reform regulation (please see our ANPR comment letter (Attachment 2) under the caption: *De-Link Securitization Reform from Safe Harbor*).

As an investor, JPMorgan finds the current safe harbor to be valuable because we can with certainty and finality determine at the time we make an investment in an insured depository institution (IDI) sponsored securitization that the FDIC will not exercise its statutory authority to undo the securitization in the event the sponsoring IDI is placed under the conservatorship of the FDIC. The proposed safe harbor provides investors with neither certainty nor finality at the time of investment due to the subjective and ongoing nature of many of the safe harbor criteria. Examples of the subjective and/or ongoing conditions include, but are not limited to: a) ongoing financial asset performance disclosure requirements; b) ongoing subjective documentation requirements of servicer loss mitigation decisions; and c) ongoing disclosure by a servicer of any direct or affiliated ownership interest in whole loans secured by a property securing loans in a serviced securitization. Unlike other securitization reform initiatives, such as the revised Regulation AB, the penalty (loss of the safe harbor) for non compliance by the IDI is borne by the investor and not the culpable party.

Without certainty of the safe harbor at the time an investor makes an investment decision (<u>i.e.</u>, the time the securitization is closed), they will prefer, all else equal, to invest in non-bank securitizations over IDI securitizations. This will be especially true for securitizations originated by IDIs that are perceived as financially weak or troubled. This would likely make it significantly more difficult for financially weak

IDIs to shrink their balance sheet through securitizations as part of a regulatory mandated capital restoration plan, which could have negative implications for the Bank Insurance Fund. For the safe harbor to continue to have value to investors they must be able to determine easily and with final certainty at the closing of the securitization (i.e., at the time they make an investment decision) the existence of the safe harbor. To achieve this we recommend the FDIC at a minimum remove post closing conditions and establish objective criteria and/or mechanisms by which investors can determine with certainty and finality that they have the benefit of the safe harbor at the time they make an investment in an IDI sponsored securitization.

Equally troubling are the differences in specifications between the current proposed safe harbor requirements applicable to IDI sponsored securitizations versus the requirements that will be applied to non-banks under financial reform legislation (Dodd-Frank), the revised Securities and Exchange Commission (SEC) Regulation AB, and other relevant securitization reform regulation (please see our ANPR comment letter under the captions: *Regulatory consistency* and *Level Playing Field*). JPMorgan sincerely hopes that it is not the intent of the FDIC to apply more stringent securitization requirements to IDIs than will be applicable to non-banks under Dodd-Frank and securitization reform regulation, and that current wording differences reflect the rapidly moving nature of financial and securitization reform initiatives. JPMorgan views the statement in the NPR press release that *"[u]pon final adoption by the SEC of the disclosure requirements in the new Regulation AB, the FDIC anticipates that compliance with those requirements will satisfy the disclosure requirements in the FDIC's proposed rule. The FDIC will continue to work closely with the SEC on these issues"* as a positive development with regards to disclosure, and would encourage the FDIC to work closely with all of the other relevant legislative and regulatory bodies to ensure consistency more broadly of securitization rules and regulations for IDIs and non-banks alike.

Responses to the specific questions posed within the NPR are contained in Attachment 1 of the letter. We appreciate the opportunity to comment on the NPR. If you should have any questions, please contact me at (212) 270-8928.

Sincerely,

Adam M. Gilbert
Managing Director
Corporate Risk Management

Questions

1. *Does the Proposed Rule treatment of participations provide a sufficient safe harbor to address most needs of participants? Are there changes to the Proposed Rule that would expand protection different types of participations issued by IDIs?*

   Participations not qualifying for GAAP sale treatment are rare, and there are significant economic incentives to avoid structuring future participations such that they fail the GAAP sales treatment.

2. *Is there a way to differentiate among participations that are treated as secured loans by the 2009 GAAP Modifications? Should the safe harbor consent apply to such participations? Is there a concern that such changes may deplete the assets of an IDI because they would apply to all participations?*

   Please see response to question 1.

3. *Is the transition period to September 30, 2010, sufficient to implement the changes required by the conditions identified by Paragraph (b) and (c)? In light of New Regulation AB, how does this transition period impact existing shelf registrations?*

   Given the operational complexity of implementing many of the proposed changes, we would recommend a transition period of not less than 180 days after publication of the final rules and/or at least as much time as is provided to comply with other relevant aspects of securitization reforms, such as revisions to Regulation AB and Dodd-Frank.

4. *Does the capital structure for RMBS identified by paragraph (b)(1)(ii)(A) provide for a structure that will allow for effective securitization of well underwritten mortgage loan assets? Does it create any specific issues for specific mortgage assets?*

   JPMorgan continues to believe investors highly value the structural flexibility securitization transactions have historically provided. Transactions are often structured in ways that cater to investors' preferences and needs. The number of tranches in a transaction is not necessarily indicative of the complexity of the structure. Restricting the use of certain capital structures may prevent some investors from participating in the securitization market, further decreasing liquidity in the market. That said the inclusion in the NPR structuring restrictions of time-based or planned amortization sub-tranches of the most senior credit tranche provides an incremental measure of flexibility over the structuring restrictions in the ANPR.

5. *Do the disclosure obligations for all securitizations identified by paragraph (b)(2) meet the needs of investors? Are the disclosure obligations for RMBS identified by paragraph (b)(2) sufficient? Are there additional disclosure requirements that should be imposed to create needed transparency? How can more standardization in disclosures and in the format of presentation of disclosures be best achieved?*

   Consistent with our cover letter and ANPR comment letter, JPMorgan believes securities disclosure and documentation requirements should be consistent for IDIs and non-banks, and that deference should be given to the disclosure requirements established by the SEC.

6. *Do the documentation requirements in paragraph (b)(3) adequately describe that rights and responsibilities of the parties to the securitization that are required? Are there other or different rights and responsibilities that should be required?*

   Please see response to Question 5.

7. *Do the documentation requirements applicable only to RMBS in paragraph (b)(3) adequately describe the authorities necessary for servicers? Should similar requirements be applied to other asset classes?*

JPMorgan believes servicer requirements should be conformed to the other securitization initiatives (e.g., Dodd-Frank and the revised Regulation AB). We also note that had the 90 day contractual provision for servicers to commence loss mitigation been in place prior to recent events, the government mandated foreclosure moratoriums would have been problematic for servicers to comply with.

8. *Are the servicer advance provisions applicable only to RMBS in paragraphs (b)(3)(ii)(A) effective to provide effective incentives for servicers to maximize the net present value of the serviced assets? Do these provisions create any difficulties in application? Are similar provisions appropriate for other asset classes?*

   Please see response to question 7.

9. *Is the limitation on servicer interest applicable only to RMBS in paragraph (b)(3)(ii)(C) effective to minimize servicer conflicts of interest? Does this provision create any difficulties in application? Are similar provisions appropriate for other asset classes?*

   This disclosure requirements contained in this paragraph would be operationally difficult for most servicers to implement, especially in event of a business consolidation. As an investor, JPMorgan would see little value in this disclosure, especially the ongoing disclosure requirement. Please also see our response to question 5.

10. *Are the compensation requirements applicable only to RMBS in paragraph (b)(4) effective to align incentives of all parties to the securitization for the long-term performance of the financial assets? Are these requirements specific enough for effective application? Are there alternatives that would be more effective? Should similar provisions be applied to other asset classes?*

    Potential and perceived rating agency conflicts of interest have been resistant to a simple and workable solution. The main U.S. rating agencies have each published papers documenting issues they see with the FDIC proposal. JPMorgan believes, as with other requirements, that this is an area where it is important the safe harbor requirements are not substantially different for IDIs than non-banks, if IDIs are to remain an important part of the mortgage securitization and underwriting market.

11. *Are the origination or retention requirements of paragraph (b)(5) appropriate to support sustainable securitization practices? If not, what adjustments should be made?*

    Please see response to question 13.

12. *Is the requirement that a reserve fund be established to provide for repurchases for breaches of representations and warranties an effective way to align incentives to promote sound lending? What are the costs and benefits of this approach? What alternatives might provide a more effective approach?*

    While the requirement in the NPR to hold a 5% reserve fund is preferable to the seasoning requirement in the ANPR, JPMorgan notes that the objectives of this requirement, to promote sound underwriting, overlap with the 5 percent vertical retention requirement; and both requirements are essentially “skin in the game” requirements. As noted in our response to question 13, JPMorgan believes the FDIC and other regulators should consider offering alternatives to meet the “skin in the game” requirement. We do not believe it is necessary for firms to be required to put “skin in the game” twice over in order to promote sound underwriting, and that benefits to the public of such redundancy are outweighed by the costs in terms of increased mortgage rates.

13. *Is retention by the sponsor of a 5 percent ‘‘vertical strip’’ of the securitization adequate to protect investors? Should any hedging strategies or transfers be allowed?*

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JPMorgan believes other forms of "skin in the game" beyond a 5 percent "vertical strip" should be considered, such as significant first loss retention and/or repurchase representations and warranties. For example, the regulatory reform legislation provides for flexibility in the implementing regulations to address different asset classes and exempts certain qualified mortgages and assets meeting prescribed underwriting standards. We urge the FDIC to either wait for the interagency process to implement the risk retention requirements of the legislation, or provide for similar flexibility and exemptions so that the requirements applicable to IDIs are consistent with the legislative intent.

14. *Do you have any other comments on the conditions imposed by paragraphs (b) and (c)?*

JPMorgan notes that the qualifier "predominately," which appeared in the ANPR has been stricken from paragraph (c)(1) of the NPR. Beyond the inconsistency with the retention requirements of paragraph (b)(5)(A), this revised language could prevent sponsors/transferors from doing what makes sense economically. Specifically, it is not uncommon in the ABS market for a sponsor/transferor to retain some of the securities being issued, especially subordinated tranches, when investor demand is low and the cost of funding exceeds rates available through other sources.

This could also be problematic for an underwriter who is an affiliate of the sponsor/servicer that has the contractual obligation to take securities into inventory at issuance if it is unable to sell all of the securities to third parties at the closing of a transaction. JPMorgan is concerned that as worded this provision could prevent an underwriter from performing its underwriting obligation.

The NPR adds a new paragraph (c)(7) which limits a sponsor that serves as a servicer, custodian or paying agent from commingling amounts received with respect to the financial assets with its own assets except for the time necessary to clear any payments received and in no event greater than a two-day period. Under current common industry practice, most existing securitization transactions, such as credit card master trust transactions, allow commingling of collections by the servicer if certain financial strength criteria predefined in the securitization documents have been satisfied; typically the servicer must maintain a rating of at least A-1/P-1/F1. If all the pre-conditions for commingling have been satisfied, the servicer may commingle collections until the business day prior to payment due dates, when it must deposit funds into a segregated trust account. For the protection of the trust and the investors against risk of collection related to a lower-rated servicer, the securitization documents include provisions which require daily deposit of collections (with an allowance of 2 business days for processing time) if the servicer is rated below A-1/P-1/F1. JPMorgan notes that investors have been well protected by existing industry practice. To our knowledge, investors have not lost money due to commingling of funds in securitizations which require servicers to maintain an A-1/P-1/F1 rating in order to commingle funds. This proposed provision will require sponsors/servicers to trap billions of dollars of cash in segregated trust accounts and would be highly inefficient. In addition, the amounts collected every month for structures, such as large credit card master trusts, are often significantly higher than the amounts actually needed to make payments.

In view of the significant operational/efficiency issues and the fact that current industry practice has worked well JPMorgan requests that the FDIC consider conforming the requirements of Paragraph (c)(7) to current industry practice by exempting servicers with strong financial positions (consistent with receiving a A-1/P-1/F1 rating) from the commingling prohibition.

15. *Is the scope of the safe harbor provisions in paragraph (d) adequate? If not, what changes would you suggest?*

For questions 15 through 18 we refer you to the American Securitization Forum's markup of the proposed rule appended to their comment letter, which JPMorgan participated in.

16. *Do the provisions of paragraph (d)(4) adequately address concerns about the receiver's monetary default under the securitization document or repudiation of the transaction?*

Please see response to question 15.

17. *Could transactions be structured on a de-linked basis given the clarification provided in paragraph (d)(4)?*

    Please see response to question 15.

18. *Do the provisions of paragraph (e) provide adequate clarification of the receiver's agreement to pay monies due under the securitization until monetary default or repudiation?*

    Please see response to question 15.

Attachment 2

JPMorgan Chase & Co.

Adam M. Gilbert
Managing Director

Via Electronic Mail

February 22, 2010

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

Re: *Advance Notice of Proposed Rulemaking (ANPR). Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution (IDI) in Connection With a Securitization or Participation After March 31, 2010. (RIN 3064–AD55)*

Dear Mr. Feldman:

JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (collectively, JPMorgan) are pleased to provide comments on the above referenced advanced notice of proposed rulemaking (ANPR) published in the Federal Register on January 7, 2010.

JPMorgan participates in virtually all aspects of the securitization process, including but not limited to: a) origination and servicing of loans; b) sponsoring, structuring and underwriting mortgage and asset-backed securities; c) market making; and d) investing. We believe being involved in as many aspects of the securitization business as we are gives us a balanced perspective.

The ANPR seeks to further a number of laudable public policy goals, such as: a) promoting sound loan underwriting and origination (with an emphasis on residential mortgages); b) structuring and providing adequate disclosure to investors to ensure participants properly understand the risks of the securitizations they are investing in; and c) responsible loan servicing (again with an emphasis on residential mortgages).

JPMorgan strongly supports these public policy goals, and notes that issues and events, such as those discussed in the *Purpose* section of the ANPR, have contributed to effectively freezing new activity in the private mortgage securitization market. Before this market opens up, we expect that there will need to be significant changes to and departure from many of the past practices highlighted in the ANPR. We commend the FDIC for taking a leadership role in thinking about these issues and possible solutions; however, we believe solutions must be implemented through consensus with other regulatory authorities in order to prevent a patchwork of overlapping and contrary regulation from emerging. Furthermore, we believe that these solutions should be de-linked from the original and primary purpose of the safe harbor provided in the Securitization Rule (as defined in the ANPR), which intends to address the treatment by the FDIC, as receiver or conservator of an insured depository institution, of financial assets transferred by the institution in connection with a securitization or participation.

As the ANPR notes, the securitization market can be a valuable balance sheet tool for banks, and can increase credit availability in many consumer and commercial sectors, and especially for residential mortgages, which is all the more reason it is important that the private securitization market open up. The bedrock of a robust and economically vibrant private mortgage securitization market has to be quality underwriting by originating firms, which investors can have faith in. Without this, investors will not have confidence to invest or necessarily receive an adequate return on their invested capital, and the market will likely remain largely frozen.

Our major comments on the ANPR are contained in the body of this letter, supplemented by comments, contained in the attachment to this letter, on the 35 specific questions posed in the ANPR.

We also wish to express our support of the comments submitted by certain industry organizations of which we are a member and in which have participated, including the American Securitization Forum (ASF), the Commercial Mortgage Securities Association, the Financial Services Roundtable and its Housing Policy Council, the Securities Industry and Financial Markets Association (SIFMA) and the American Bankers Association and its affiliate the ABA Securities Association.

I. Regulatory Concerns

We have a number of concerns arising from the FDIC using its authority to repudiate contracts when it takes over failed IDIs as the leading edge of comprehensively overhauling the regulation of the issuance and servicing of securitizations.

De-Link Securitization Reform from Safe Harbor

We strongly believe that the safe harbor provisions of the Securitization Rule should be de-linked from the securitization reform related provisions that the FDIC is proposing in the ANPR. As stated above, JPMorgan strongly supports the public policy goals in many of these reform proposals. However, preconditions addressing capital structure, disclosures, documentation and recordkeeping, compensation, origination and retention requirements should not be tied to the determination of whether financial assets will be treated as having been legally isolated from the IDI. These preconditions have no relevance for a traditional sale or security interest analysis. De-linking securitization reform from the legal isolation safe harbor would allow greater clarity in the construction of the safe harbor. Many of these preconditions are ongoing, vague and subjective, which means that the legal determination that the safe harbor has been met at the issuance of the securitization will be all but impossible to achieve. De-linking securitization reform from the legal isolation safe harbor would also lead to a better alignment of interests. The inclusion of the securitization reform preconditions in the legal isolation safe harbor allocates the greatest risk from noncompliance to investors who face the loss of legal isolation protection from an IDI's receivership when that institution fails to live up to its obligations. A separation of the securitization reform requirements from the safe harbor would provide greater certainty to the investors who should bear risks associated with the assets but not risks associated with the IDI that originated them.

In addition, we note that the Securitization Rule intends to address the treatment in insolvency of transfers of financial assets. In order to properly separate that from the accounting treatment, as is necessary post FAS 167, the FDIC should make explicit, as it did in the issuance of the original Securitization Rule in 2000, that the safe harbor is not exclusive and that general legal principles for determining whether a transfer is considered a sale, as well as the commonly recognized judicial principles for determining corporate separateness, still apply to securitizations that fall outside the safe harbor or fail to satisfy one of its conditions.

Regulatory Consistency

The ANPR has been released at a time when both houses of the U.S. Congress are active in adopting or proposing financial services legislation that includes securitization reform provisions, including risk retention, which overlap substantially with many of the conditions in the ANPR, and which will need to be implemented on an interagency basis through regulations issued by the FDIC and others. The Securities and Exchange Commission (SEC) has announced that it is undertaking a review of its securitization disclosure requirements as well. In addition, securitization issues, including risk retention, have been addressed by the European Parliament and other international legislative and regulatory bodies. We are very concerned about the impact of multiple layers of potentially inconsistent and overlapping securitization legislation and regulation on the viability of an effective securitization market. We urge the FDIC to show restraint in adopting any securitization reforms on a pre-emptive and unilateral basis.

For all the above reasons, we believe that securitization reform should be embodied in a separate set of securitization rules that should be developed on an interagency basis, with deference regarding any disclosure requirements given to the SEC to ensure consistency. Having said that, in the sections below we provide our thoughts on some of these proposed securitization reforms.

Level Playing Field

Insofar as the proposed rulemaking only affects IDIs and not non-bank market participants, in the absence of consensus regulation it would create overlapping regulations in a number of functionally regulated areas for IDIs, as well as level playing field issues between banks and non-banks. Moreover, most banking organizations could fairly easily, if so desired, sidestep the proposed rulemaking by migrating activities from bank to non-bank subsidiaries. In our view, one of the principal likely effects of the proposed rulemaking (in isolation) will be to drive a large portion of loan, and principally mortgage, underwriting and securitization activities out of IDIs into non-bank entities.

Some of the lessons learned from recent events are that home finance and other lending volume tends towards those firms with the least stringent underwriting and documentation standards, and that firms with low standards can have a destructive competitive effect on the industry as a whole. We also saw that firms that take shortcuts in underwriting and documentation can unfortunately take a long time to go out of business in a rising real estate market. We believe it is important for rule-making to support IDIs continued involvement in the home finance and securitization market, and one of the best ways to do this is to ensure consistent standards amongst the differently licensed participants in the market. In our view, ensuring consistent standards will require the FDIC to work with other regulatory authorities to ensure consistent principles are applied equally and universally to all market participants.

II. Underwriting Standards and Risk Retention

The proposed rulemaking seeks to promote sound home finance underwriting by imposing certain origination requirements, such as seasoning (12 months) and minimum origination standards, and retention requirements (a 5 percent vertical slice) designed to tie the ongoing economic interests of mortgage originators and securitization investors (colloquially referred to as “skin in the game”).

Alternatives to the “skin in the game” approach have been proposed and are being considered which more directly address the quality of the securitized loans, which presumably is the underlying goal of the risk retention proposals. Comptroller of the Currency John C. Dugan has proposed the establishment by regulation of minimum underwriting standards for residential mortgage loans. These minimum standards, which would include meaningful and effective income verification, down payments, debt-to-income ratios and qualification based on fully indexed rates, would directly work to improve the quality of the assets underlying future securitizations, instead of attempting to indirectly improve loan quality through “skin in the game” requirements which may have significant impacts on accounting and regulatory capital requirements, thereby constraining the resurgence of a healthy securitization market.

As an investor, retained interests are not generally JPMorgan’s preferred method of ensuring quality home loan origination standards. Rather we would prefer, in conjunction with the above-stated proposals relating to minimum underwriting standards, to have strong representations and warranties, together with strong and standardized repurchase provisions, which are a more effective form of 100 percent risk retention that more directly addresses the manner in which the loans were originated. In this regard, we note that representations and warranties are the primary method used by Government Sponsored Entities (GSEs) in enforcing strong underwriting standards with sellers. Strong and thoughtful representations and warranties and the use of early default remedies in our view provide equivalent or better economic alignment of interests (with respect to the integrity of underwriting and documentation) between mortgage originators and investors as the 12 month seasoning period and 5 percent risk retention proposed in the ANPR, without the unintended consequences of those proposals.

In furtherance of industry standardization and enhancement of representations and warranties, we note JPMorgan has participated in and supports the ASF’s Project on Residential Securitization Transparency and Reporting (Project RESTART), which is a broad-based industry-developed initiative to help rebuild investor confidence in mortgage and asset-backed securities, restore capital flows to the securitization markets and enhance market lending discipline. As part of Project RESTART, the ASF released on

December 15, 2009 the final version of a model set of representations and warranties for RMBS transactions. The model representations have been developed to more clearly allocate origination risks between issuers and investors and provide enhanced investor protections over what had been previously provided in "pre-crisis" transactions. As the next phase of Project RESTART, the ASF has begun developing a uniform set of procedures to enforce the model representations and in subsequent phases will release standards for pre-securitization due diligence, including originator reviews, in order to create market confidence in the adequacy of the mortgage origination and underwriting process and the data provided to market participants. Project RESTART has been recognized by senior policymakers and market participants as a necessary industry initiative to improve the securitization process by developing commonly accepted and detailed standards for transparency, disclosure and diligence that each appropriate market participant will be recommended to implement. We believe that necessary reforms in these areas are best achieved through industry efforts such as Project RESTART.

The proposed seasoning and retention requirements would likely have significant unintended consequences on the availability of credit in the home finance market and expose banks to additional interest rate risk. Long-term fixed rate mortgages generally present maturity mismatch issues for banks funding their assets through shorter-term core deposits. A requirement to hold a vertical 5 percent slice of securitized assets until maturity would increase the maturity mismatch a bank would have to manage (something we would think should be of concern to the FDIC in its role as a prudential supervisor), and could very quickly deter banks from providing home finance credit outside of what can be sold to the GSEs. Similarly, the 12 month seasoning requirement would not allow banks to free up capital, as quickly as in the past, through sales (securitizations) to reinvest in new mortgage originations. This can reasonably be expected to constrain banks' abilities to provide new home loan financing, especially non-prime loans.

Requiring retention of "credit risk" would result in the IDI retaining exposure to loans that does not bear any relation to how the loans were originated, given that factors beyond the control of the originator (such as general economic conditions and changed circumstances of the borrowers) will also result in credit risk. As a consequence, mandating risk retention will result in IDIs maintaining more credit risk than is necessary to achieve the desired result. This would not only result in more risk on the balance sheets of these institutions, but may very well reduce the number of originators and the amount of lending, which would run counter to the goals of re-starting the securitization markets. Furthermore, requiring IDIs to hold credit risk (particularly un-hedged) enhances pro-cyclicality. In good times it will increase profits and it will make it more difficult for market participants to recover from downturns. Consistent and robust origination practices and representations, on the other hand, will help prevent bubbles in good times and provide meaningful assurance to investors in bad times - a countercyclical response.

The 5 percent vertical slice retention requirement in the ANPR also carries over to non-home finance securitizations, which would be problematic to securitizations that are principally finance transactions, such as credit card securitizations, where banks typically retain substantial first loss and subordinated security positions in support of these structures. We note that these types of structures have generally worked well, providing banks with relatively inexpensive funding and have been safe for investors as currently structured.

JPMorgan supports requirements that originators maintain a measure of "skin in the game" and, as noted above, we believe that should more appropriately be in the form of strong representations, repurchase provisions and the use of early default remedies. However, if a form of risk retention is imposed, we believe more than one method of ongoing economic interest should be recognized to meet this requirement, and that the requirement should sunset after an appropriate time. We question whether an investor needs a bank to hold 5 percent of a fixed-rate mortgage for a full 30 years to be protected against shoddy underwriting practices. Furthermore, different transaction structures and asset classes may require different forms of "skin in the game". We would argue that a meaningful risk retention threshold may be far different for a subprime mortgage asset than for a prime credit card receivable. In the CMBS market, buyers of the "first loss" tranches, which tend to be sophisticated real estate investors, perform extensive due diligence on the loans precisely because they are holding the credit risk on those loans. This may be an important factor as to why the commercial real estate market, while experiencing significant credit and liquidity issues, has not seen the type of origination abuses that were present in the subprime residential market. Therefore, we would urge the FDIC (in conjunction and coordination with the other relevant regulatory authorities) to consider distinctions between asset classes and/or risk profiles and provide flexibility in implementing risk retention requirements.

Another alternative proposed by JPMorgan would exempt prudently underwritten loans which do not contain those features which tend to present risks to the parties to a securitization transaction from risk retention requirements. This proposal would excuse the imposition of risk retention requirements for certain "qualified mortgages", defined as mortgage loans possessing characteristics such as fully amortizing payments, market interest rates, income verification, terms of 30 years or less, reasonable debt-to-income ratios and protections for loan-to-value rations exceeding 80%. Again, by focusing on the quality of the loans underlying a securitization, the concerns regarding capital requirements which are likely to prohibit the resurgence of a healthy securitization market are avoided

III. Allowable Securitization Structures and Enhanced Disclosure

The ANPR seeks to promote additional disclosures, as well as simpler securitization structures through limits on the allowable number of tranches and features (such as leveraged tranches) in a securitization structure. In our view, these efforts, which are essentially investor protection initiatives, overlap with the authority and purpose of the SEC. As an issuer, investor and underwriter, JPMorgan would prefer that the SEC be the sole federal authority regulating disclosure, reporting and investor protection, as they have established oversight mechanisms in place. As noted previously, we are not in favor of the creation of overlapping regulations and enforcement regimes which leads to regulatory inconsistency and uncertainty. As noted above, the SEC has announced that it is undertaking a review of its securitization disclosure requirements and will be proposing amendments to Regulation AB. That is the appropriate venue for securitization disclosure reform.

In the area of enhanced disclosure, reporting and transparency, we again note that the first two deliverables of Project RESTART have been issued, namely the ASF RMBS Disclosure Package, a package of loan-level information to be provided by issuers prior to the sale of private-label RMBS transactions, and the ASF RMBS Reporting Package, a package of loan-level information to be updated on a monthly basis by RMBS servicers throughout the life of an RMBS transaction. Both of these packages increase and standardize critical data at issuance and throughout the life of a transaction, which will enable investors to better perform deal and loan-level analysis on the basis of the credit quality of the underlying mortgage loans. These efforts (which include the active participation of the investor members of the ASF) indicate the industry's efforts to self-correct many of the deficiencies in disclosure, reporting and transparency.

IV. Servicing and Loss Mitigation

In many instances, with the benefit of hindsight, past securitization structures did not adequately contemplate mortgage servicers having to operationalize programs such as the *Home Affordable Modification Program*. JPMorgan supports having documented pre-established mechanisms in place to handle decisions effectively and efficiently on whether to offer mortgage modifications to (and/or pursue other remedies against) homeowners whose mortgages have been securitized, and that the ultimate decision should be vested in a single entity. That said, we are not in favor of a prescriptive regulatory solution because we believe that when the private mortgage securitization market opens up, new securitizations will adequately contemplate appropriate mechanisms for efficiently and effectively considering mortgage modifications. In this regard we again note that as part of Project RESTART, the ASF will also be producing model servicing provisions for pooling and servicing agreements which will create more standardized documentation provisions and work rules in key areas, such as loss mitigation procedures that servicers may employ in dealing with delinquent or defaulting loans.

We appreciate the opportunity to comment on the ANPR. If you have any questions, please contact me at (212) 270-8928.

Sincerely,

Adam M. Gilbert
Managing Director
Corporate Risk Management

General Questions

1. *Do the changes to the accounting rules affect the application of the preexisting Securitization Rule to participations? If so, are there changes to the Securitization Rule that are needed to protect different types of participations issued by IDIs?*

   We are not aware of any beyond those mentioned in the industry group letters.

2. *Is the transition period to March 31, 2010 sufficient to implement the changes required by the conditions identified by Paragraph (b) and (c)? How does this transition period impact existing shelf registrations?*

   Insofar as the FDIC is only collecting comments on the ANPR by February 22, 2010 publication of final rules will almost certainly extend well past the proposed March 10, 2010 transition period. We would recommend a transition period of at least 180 days after publication of the final rules, and perhaps more if the securitization reform preconditions are not removed from the final rule, as many of those conditions may take longer to implement operationally.

Capital Structure

3. *Should certain capital structures be ineligible for the future safe harbor? For example, should securitizations that include leveraged tranches that introduce market risks (such as leveraged super senior tranches) be ineligible?*

   Investors highly value the structural flexibility securitization transactions have historically provided. Transactions are often structured in ways that cater to investors' preferences and needs. Restricting the use of certain capital structures may prevent some investors from participating in the securitization market, further decreasing liquidity in the market. We are further concerned that the proposed rules will create overlapping investor protection regimes with the SEC.

4. *For RMBS specifically, in order to limit both the complexity and the leverage of RMBS, and therefore the systemic risk introduced by them in the market, should the capital structure of the securitization be limited to a specified number of tranches? If so, how many, and why? If no more than six tranches were permitted, what would be the potential consequence?*

   Please see answer to Question 3 above. We also note that the number of tranches in a securitization structure does not necessarily correlate to the complexity of the transaction.

5. *Should there be similar limits to the number of tranches that can be used for other asset classes? What are the benefits and costs of taking this approach?*

   No. Please see answers to Questions 3 & 4 above.

6. *Should re-securitizations (securitizations supported by other securitization obligations) be required to include adequate disclosure of the obligations including the structure and asset quality supporting each of the underlying securitization obligations and not just the obligations that are transferred in the re-securitization?*

   JPMorgan supports investors receiving adequate disclosure to make informed investment decisions. We believe if additional disclosure requirements are required they should be implemented through the securities disclosure regulations of the SEC.

7. *Should securitizations that are unfunded or synthetic securitizations that are not based on assets transferred to the issuing entity or owned by the sponsor be eligible for expedited consent?*

As we are unsure of what is meant by "unfunded" securitizations, we do not know how to respond to this question. Synthetic securitization would not fall under the Securitization Rule as they do not involve a transfer of assets.

8. *Should all securitizations be required to have payments of principal and interest on the obligations primarily dependent on the performance of the financial assets supporting the securitization? Should external credit support be prohibited in order to better realign incentives between underwriting and securitization performance? Are there types of external credit support that should be allowed? Which and why?*

   In general, external providers of credit support will not issue support to securitization obligations that are incapable ex ante of being supported by the performance of the underlying assets. We can see no reason why banks should not be given the opportunity to purchase external credit protection and investors be given the option to invest in these deals.

Disclosures

9. *What are the principal benefits of greater transparency for securitizations? What data is most useful to improve transparency? What data is most valuable to enable investors to analyze the credit quality for the specific assets securitized? Does this differ for different asset classes that are being securitized? If so, how?*

   In addition to complying with applicable securities laws and regulations, a firm such as JPMorgan relies upon its reputation for fair dealing to remain in business, which includes making appropriate disclosures, as both issuer and underwriter, in securities offerings (not just securitizations). Each class of assets has its own unique metrics, which may change over time as underlying economic conditions change. We believe that disclosure rules and regulations must be principles based rather than prescriptive, to allow for changing environments and financial products over time and should be codified under the SEC's existing authority. We also believe that the industry is, and should be, improving disclosure and transparency through efforts such as the ASF's Project RESTART and in general through ongoing dialogue between issuers, underwriters and investors.

10. *Should disclosures required for private placements or issuances that are not otherwise required to be registered include the types of information and level of specificity required under Securities and Exchange Commission Regulation AB, 17 C.F.R. §§ 229.1100-1123, or any successor disclosure requirements?*

    Again, we view this as the SEC's jurisdiction. We also note that 144A transactions already provide very similar disclosure to that required of public securitizations under Regulation AB because of general materiality standards and investor requirements.

11. *Should qualifying disclosures also include disclosure of the structure of the securitization and the credit and payment performance of the obligations, including the relevant capital or tranche structure? How much detail should be provided regarding the priority of payments, any specific subordination features, as well as any waterfall triggers or priority of payment reversal features?*

    Our legal interpretation is that this is already covered by Regulation AB and by general materiality standards in 144A transactions, and any required enhancements in this regard should be made by the SEC by amending Regulation AB.

12. *Should the disclosure at issuance also include the representations and warranties made with respect to the financial assets and the remedies for such breach of representations and warranties, including any relevant timeline for cure or repurchase of financial assets.*

    For Questions 12, 13, 14 and 17, our legal interpretation is that this is already covered by Regulation AB and by general materiality standards in 144A transactions, and any required enhancements in this regard should be made by the SEC by amending Regulation AB. In addition, industry efforts, such as Project RESTART, are addressing enhanced transaction disclosure.

13. *What type of periodic reports should be provided to investors? Should the reports include detailed information at the asset level? At the pool level? At the tranche level? What asset level is most relevant to investors?*

    Please see answer to Question 12 above.

14. *Should reports included detailed information on the ongoing performance of each tranche, including losses that were allocated to such tranche and remaining balance of financial assets supporting such tranche as well as the percentage coverage for each tranche in relation to the securitization as a whole? How frequently should such reports be provided?*

    Please see answer to Question 12 above.

15. *Should disclosures include the nature and amount of broker, originator, rating agency or third-party advisory, and sponsor compensation? Should disclosures include any risk of loss on the underlying financial assets is retained by any of them?*

    As an investor, we can see how additional disclosure regarding compensation of certain transaction participants may in certain instances be helpful; and as a sponsor/originator, we believe disclosure would make it more difficult to effectively negotiate cost-efficient fee arrangements with vendors such as rating agencies, and we do not believe such fee negotiations have any impact on the quality of the financial assets being originated or securitized. More generally, we believe disclosure should harmonized by the SEC through Regulation AB.

16. *Should additional detailed disclosures be required for RMBS? For example should property level data or data relevant to any real or personal property securing the mortgage loans (such as rents, occupancy, etc.) be disclosed?*

    While some investors seek and have the ability to analyze this level of detailed loan-level data, it may be difficult for certain other investors to digest and analyze, so we believe most investors would find meaningful summary and qualitative information more useful. Again, any required enhancements in this regard should be made by the SEC by amending Regulation AB, and through industry efforts, such as Project RESTART, and ongoing dialogue between issuers, underwriters and investors.

17. *For RMBS, should disclosure of detailed information regarding underwriting standards be required? For example, should securitizers be required to confirm that the mortgages in the securitization pool are underwritten at the fully indexed rate relying on documented income,*[3] *and comply with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional guidance applicable at the time of loan origination?*

    Please see answer to Question 12 above.

18. *What are the primary benefits and costs of potential approaches to these issues?*

    In most instances, our legal interpretation is that the proposed disclosures are already covered by Reg AB and by general materiality standards in 144A transactions. To the extent that additional disclosure is required, we would favor codification through SEC rules and guidance to ensure that overlapping rules and regulations are not propagated.

Documentation and Recordkeeping

19. *With respect to RMBS, a significant issue that has been demonstrated in the mortgage crisis is the authority of servicers to mitigate losses on mortgage loans consistent with maximizing the net present value of the mortgages, as defined by a standardized net present value analysis. For RMBS, should contractual provisions in the servicing agreement provide for the authority to*

modify loans to address reasonably foreseeable defaults and to take such other action as necessary or required to maximize the value and minimize losses on the securitized financial assets?

JPMorgan supports having documented pre-established mechanisms in place to handle decisions effectively and efficiently on whether to offer mortgage modifications to (and/or pursue other remedies against) homeowners whose mortgages have been securitized, and that the ultimate decision should be vested in a single entity. That said, we are not in favor of a prescriptive regulatory solution because we believe that when the private mortgage securitization market opens up, new securitizations will adequately contemplate appropriate mechanisms for efficiently and effectively considering mortgage modifications.

In this regard, we note that as part of Project RESTART, the ASF will also be producing model servicing provisions for pooling and servicing agreements which will create more standardized documentation provisions and work rules in key areas, such as loss mitigation procedures that servicers may employ in dealing with delinquent or defaulting loans.

20. *Loss mitigation has been a significant cause of friction between servicers, investors and other parties to securitizations. Should particular contractual provisions be required? Should the documents allow allocation of control of servicing discretion to a particular class of investors? Should the documents require that the servicer act for the benefit of all investors rather than maximizing the value of to any particular class of investors?*

    Please see answer to Question 19 above. If the disclosures in securitization documents are complete and accurate as to the relative interests and rights of the investor classes, proper servicing in accordance with the terms of the securitization documents benefits all investors in the manner provided in the transaction agreements.

21. *In mitigating losses, should a servicer specifically be required to commence action to mitigate losses no later than a specified period, e.g., ninety (90) days after an asset first becomes delinquent unless all delinquencies on such asset have been cured?*

    Please see answer to Question 19 above.

22. *To what extent does a prolonged period of servicer advances in a market downturn misalign servicer incentives with those of the RMBS investors? To what extent to servicing advances also serve to aggravate liquidity concerns, exposing the market to greater systemic risk? Should the servicing agreement for RMBS restrict the primary servicer advances to cover delinquent payments by borrowers to a specified period, e.g., three (3) payment periods, unless financing facilities to fund or reimburse the primary servicers are available? Should limits be placed on the extent to which, foreclosure recoveries can serve as a 'financing facility' for repayment of advances?*

    Please see answer to Question 19 above.

Compensation

23. *What are the primary benefits and costs of potential approaches to these issues?*

    For Questions 23 and 24, we see a number of potential operational issues, such as: a) who would set performance conditions; b) who would determine whether a service provider met the performance conditions to be paid; and c) how deferred compensation would be escrowed and funded. We believe that the market should set compensation.

24. *Should requirements be imposed so that certain fees in RMBS may only be paid out over a period of years? For example, should any fees payable to the lender, sponsor, credit rating agencies and underwriters be payable in part over the five (5) year period after the initial issuance of the obligations based on the performance of those financial assets? Should a limit be set on the total*

estimated compensation due to any party at that may be paid at closing? What should that limit be?

25. *Should requirements be imposed in RMBS to better align incentives for proper servicing of the mortgage loans? For example, should compensation to servicers be required to take into account the services provided and actual expenses incurred and include incentives for servicing and loss mitigation actions that maximize the value of the financial assets in the RMBS?*

    Servicing compensation already takes these issues into consideration. Failure to comply with the servicing requirements set forth in the operative documents results in penalties enforceable against the servicer.

26. *What are the primary benefits and costs of potential approaches to these issues?*

    Please see answer to Question 25 above.

27. *Should similar or different provisions be applied to compensation for securitizations of other asset classes?*

    Please see answer to Question 25 above.

Origination and Retention Requirements

28. *For all securitizations, should the sponsor retain at least an economic interest in a material portion of credit risk of the financial assets? If so, what is the appropriate risk retention percentage? Is five percent appropriate? Should the number be higher or lower? Should this vary by asset class or the size of securitization? If so how?*

    Please see Section II of our letter.

29. *Should additional requirements to incentivize quality origination practices be applied to RMBS? Is the requirement that the mortgage loans included in the RMBS be originated more than 12 months prior to any transfer for the securitization an effective way to align incentives to promote sound lending? What are the costs and benefits of this approach? What alternatives might provide a more effective approach? What are the implications of such a requirement on credit availability and institutions' liquidity?*

    Please see Section II of our letter.

30. *Would the alternative outlined above, which would require a review of specific representations and warranties after 180 days and the repurchase of any mortgages that violate those representations and warranties, better fulfill the goal of aligning the sponsor's interests toward sound underwriting? What would be the costs and benefits of this alternative?*

    Yes. Please see Section II of our letter

31. *Should all residential mortgage loans in an RMBS be required to comply with all statutory and regulatory standards and guidance in effect at the time of origination? Where such standards and guidance involve subjective standards, how will compliance with the standards and guidance be determined? How should the FDIC treat a situation where a very small portion of the mortgages backing an RMBS do not meet the applicable standards and guidance?*

    Banks are already required to adhere to all relevant statutory and regulatory standards for mortgage origination irrespective of whether the mortgage is sold through and RMBS. We expect that the FDIC and other relevant banking agencies will need to continue to apply judgment in determining whether non-compliance at a given institution is material and what the appropriate remedy might be. However, the appropriate remedy should not include repudiation of a transfer of assets into a securitization, which ultimately impacts the investors in the securitization, not the IDI.

32. *What are appropriate alternatives? What are the primary benefits and costs of potential approaches to these issues?*

    Please see Section II of our letter.

Additional Questions

33. *Do you have any other comments on the conditions imposed by paragraphs (b) and (c) of the sample regulatory text?*

    For Questions 33- 35 we refer to the proposed changes to the regulatory text recommended in the comments letters submitted by the ASF and SIFMA.

34. *Is the scope of the safe harbor provisions in paragraph (d) of the sample regulatory text adequate? If not, what changes would you suggest?*

    Please see answer to Question 33 above.

35. *Do the provisions of paragraph (e) of the sample regulatory text provide adequate clarification of the receiver's agreement to pay monies due under the securitization until monetary default or repudiation? If not, why not and what alternatives would you suggest?*

    Please see answer to Question 33 above.