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February 22, 2010

Mr. Robert E. Feldman
Executive Secretary, Federal Deposit Insurance Corp.
550 17th St. N.W.
Washington, D.C. 20429
Attn: Comments

RE: RIN 3064-AD55: Comment on Proposed Amendment to 12 C.F.R. pt 360, Treatment by the Federal Deposit Insurance Corporation as Conservator of Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization of Participation After March 31, 2010 (the "Proposed Rule")

Mr. Feldman:

We appreciate the opportunity to comment in response to the Federal Deposit Insurance Corporation's ("FDIC") request on its Advanced Notice of Proposed Rulemaking regarding the proposed treatment of assets transferred by an FDIC-insured depository institution related to future securitizations.

The purpose of this letter is to ask the FDIC to address and further clarify the ambiguity of the phrase "regularly scheduled payments" as that term is used in Section (e) of the Proposed Rule and help clarify to investors the scope of payments they can expect to receive under the new Proposed Rule. Section (e) of the Proposed Rule states:

During the stay period imposed by 12 U.S.C. 1821(e)(13)(C), the FDIC as conservator or receiver of the sponsor consents to the payment of *regularly scheduled payments* to the investors made in accordance with the securitization documents and to any servicing activity with respect to the financial assets included in securitizations that meet the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section.

It has been our experience that most securitization structures and transaction documents contain default provisions that will be triggered if the FDIC is appointed receiver or conservator of the sponsor. These default provisions can alter how the payments on the receivables are allocated within the trust and modify the amount and types of payments that would otherwise be made to

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the investors by triggering such events as an accelerated accumulation period, a rapid amortization period, a pay out event or other such rapid repayment.

For example, in a typical revolving credit card securitization, when the securitization is in the revolving period, the principal payments received on the receivables, in most circumstances, are not passed through as principal payments to the investors of the notes; instead, the principal payments on the receivables are released to the equity owner of the trust. However, once the FDIC is appointed conservator or receiver of the sponsor, the securitization is placed into rapid amortization and all of the principal payments received on the receivables are passed through to the investors of the notes until the notes are paid in full. If the FDIC were to take over as conservator or receiver, would they interpret Section (e) to mean they would continue to make regular payments to the investors as if no event of default had taken place; or, would they make the payments due to the investors in accordance with the trust documents as those payments are modified or accelerated by the event of default?

We appreciate the FDIC's consideration on this matter and considering whether such payment events would constitute "regularly scheduled payments" in accordance with Section (e) so long as they were set forth under the securitization documents.

Thank you,



Kutak Rock, LLP