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Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corp.
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Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
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Re: Notice of Proposed Rulemaking: Risk-Based Capital Guidelines: Market Risk; Alternatives to Credit Ratings for Debt and Securitization Positions; **OCC Docket ID – OCC-2010-0003; Federal Reserve Board Docket No. R-1401; FDIC RIN 3064-AD70**

Ladies and Gentlemen:

The Commercial Real Estate (CRE) Finance Council® and The Real Estate Roundtable (RER) appreciate the opportunity to submit this joint response to the above-referenced notice of proposed rulemaking (NPR) issued in December by the Federal Reserve, FDIC, and Comptroller of the Currency (the Agencies) under Dodd-Frank Section 939A.[1] As proposed, the measure would change the standards for banking entities' calculation of market risk capital requirements for securitization positions. Members of our respective organizations are concerned that the risk-based capital standard in the NPR would ultimately penalize securitization positions because the standard may require banks to hold more capital against securitization positions than would be required for assets held on portfolio. More broadly, such disparate treatment of asset-backed securities could lead to an imbalance in the commercial real estate finance market, potentially undermining efforts to enhance credit capacity and stalling the nation's economic recovery.

[1] Risk-Based Capital Guidelines: Market Risk; Alternatives to Credit Ratings for Debt and Securitization Positions, Notice of Proposed Rulemaking, 76 Fed. Reg. 79380 (Dec. 21, 2011) (hereafter, "NPR").

Therefore, we respectfully request that the Agencies consider a re-proposal of the rule following the public comment period, rather than issue a final rule. We also recommend that a comprehensive/cost benefit analysis be conducted of how the proposal will affect commercial real estate and the overall national economy before the rules are finalized. With this additional step, the Agencies could further refine the proposed rules and reduce the potential for an unintended negative impact on the securitization market, important capital formation, and the national economy.

The CRE Finance Council is the collective voice of the entire $3.5 trillion commercial real estate finance market, including portfolio, multifamily, and commercial mortgage-backed securities ("CMBS") lenders; issuers of CMBS; loan and bond investors such as insurance companies and pension funds; servicers; rating agencies; accounting firms; law firms; and other service providers. Because its members represent a broad spectrum of interests within the CRE finance market, the CRE Finance Council has an interest in the development of a regulatory framework that promotes a reasonable balance between the various financing mechanisms that are available in the market. Securitization and portfolio lending are both critical means of delivering the capital that is necessary for the growth and success of commercial real estate markets.

The Real Estate Roundtable represents the principal owners, investors and managers of the U.S. income-producing commercial and multifamily real estate sector. As such, RER recognizes that the goal of the Agencies is to provide greater integrity and discipline in domestic and international capital markets. RER and its members lead an industry that generates more than 20 percent of America's gross national product, employs more than 9 million people, and produces nearly two-thirds of the taxes raised by local governments for essential public services. RER members are senior real estate industry executives from the nation's leading income-producing real property owners, managers and investors, the elected heads of America's leading real estate trade organizations, as well as the key executives of the major financial services companies involved in financing, securitizing or investing in income-producing properties.

As the Agencies consider market risk capital requirements affecting securitization, it is important to be aware that even in normal economic conditions, the primary banking sector lacks the capacity to meet CRE borrower demand. That gap has been filled over the last two decades by securitization (specifically CMBS), which accounts, on average, for approximately 25% of all outstanding commercial real estate debt, and accounted for as much as 50% at the market's peak in 2007, when the volume of new commercial real estate loan originations and thus new CMBS reached $240 billion. The prolonged liquidity crisis caused new CMBS issuance to plummet to $12 billion in 2008 and $2 billion in 2009. And while the CMBS market showed some improvement since then, global economic difficulties and the sovereign debt concerns that arose in 2011 caused slower growth in issuance than had been anticipated for the year, with total issuance reaching approximately $30 billion. Predictions for 2012 are that issuance will remain at this level.

The slowed CMBS market recovery comes at a time, unfortunately, when the CRE industry faces an increasing number of mortgage maturities for which capital will be required, either in the form of debt or equity, to avoid further declines in commercial property values. Through 2017 for example, approximately $600 billion of CMBS loans and more than $1.2 trillion in outstanding commercial mortgages will mature. Borrower demand to re-finance these mortgages will be at an all-time high. Thus, any regulatory changes that impact securitization come at a sensitive time for the CMBS market.

And changes that effectively discourage banks from securitization would create considerable difficulties for the market.

Yet, we believe that the Agencies' proposal to use the weighted average capital requirement for the underlying exposures in assigning the specific risk-weighting factor for securitizations, and the proposed supervisory minimum risk-weighting factor floor for securitizations, result in differential treatment between securitization investments and portfolio loans that places securitization at a disadvantage. Such a disadvantage could discourage securitization by banks and ultimately could have an adverse impact on the capital availability in the commercial real estate market. The differential treatment is all the more anomalous considering that portfolio loans present a greater exposure for banks from the outset, in contrast to securitization, where a bank's exposure is limited to the portion of the securitization held by the bank.

The NPR advises that its approach to securitization positions is designed to address circumstances that may arise under the present rules where "senior securitization positions require limited amounts of capital, even if their external ratings are substantially downgraded."[2] The NPR acknowledges that at the inception of a securitization, its approach will "require more capital on a transaction–wide basis than would be required if the pool of assets had not been securitized. That is, if the bank held every tranche of a securitization, its overall capital charge would be greater than if the bank held the underlying assets in portfolios."[3]

The CRE Finance Council and RER recognize regulators' desire to discourage "regulatory capital arbitrage through the use of securitization,"[4] but our members do not believe it is necessary to penalize securitizations to achieve this aim. The Agencies should consider the necessity and importance of securitization to the capital markets, and we accordingly request that the Agencies consider a re-proposal of the rule following the public comment period, rather than issue a final rule. We also recommend that a comprehensive/cost benefit analysis be conducted of how the proposed will affect commercial real estate and the overall national economy before the rules are finalized, so that the Agencies can further refine the proposed rules and reduce the potential for an unintended negative impact on the securitization market, important capital formation, and the national economy.

We appreciate your consideration of our comments regarding the NPR. We stand ready to provide any additional assistance that may be helpful.

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[2] *Id*. at 79395.

[3] *Id*. at 79394. We note that as securitizers begin complying with the risk retention framework, which provides the option of retaining risk in a vertical slice (i.e., every tranche) of a transaction, the impact of the proposed SSFA approach could be magnified for those banks that choose to comply with risk retention by holding a vertical slice.

[4] *Id*.

Respectfully submitted,

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