NATIONAL AUTOMOBILE DEALERS ASSOCIATION
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Legal & Regulatory Group

July 29, 2011

Via E-Mail

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, D.C. 20219
Docket Number OCC-2011-0002

Board of Governors of the Federal Reserve System
Jennifer J. Johnson, Secretary
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
Docket No.R-1411

Federal Deposit Insurance Corporation
Robert E. Feldman, Executive Secretary
550 17th Street, NW
Washington, DC 20429
RIN 3064-AD74

Securities and Exchange Commission
Elizabeth M. Murphy, Secretary
100 F Street, NE
Washington, D.C. 20549-1090
File Number S7-1411

Re: Credit Risk Retention; Proposed Rule

The National Automobile Dealers Association ("NADA") submits the following comments in response to the Notice of Proposed Rulemaking ("NPR") that was jointly issued by the Security and Exchange Commission and the federal banking agencies (Board of Governors of the Federal Reserve System ("Board"), Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation)(collectively "the agencies") pursuant to section 941(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). 76 Fed. Reg. 24,090 – 24,186 (Apr. 29, 2011); 76 Fed. Reg. 34,010 – 34,011 (Jun. 10, 2011). These comments supplement earlier comments, which are incorporated herein by reference, that NADA submitted to the Board in advance of its Study on Risk Retention.[1]

NADA represents approximately 16,000 franchised dealers in all 50 states and the District of Columbia who (i) sell new and used automobiles and trucks; (ii) extend vehicle financing and leases to consumers that routinely are assigned to third-party finance sources; and (iii) engage in service, repair, and parts sales. Our members, a significant number of whom are small businesses as defined by the Small Business Administration, collectively employ approximately one million people nationwide.

[1] NADA's comments to the Board dated October 1, 2010 are currently available at: www.federalreserve.gov/newsevents/files/NADA_communication_20101001.pdf.

Many aspects of the NPR do not directly affect franchised car and truck dealers as they typically do not issue asset–backed securities ("ABS") as defined in section 15G(a)(3) of the Securities Exchange Act of 1934 ("SEC Act"). However, many of the finance sources that provide funding to franchised car and truck dealers to acquire and maintain their new and used vehicle inventories (known as "floorplan" lines of credit or "floorplanning") and to customers to purchase and lease vehicles from dealers are ABS issuers. In addition, franchised car and truck dealers appear to meet the definition of an "originator" as defined in section 15G(a)(4) of the SEC Act. Accordingly, the agencies' final rules implementing section 941 of the Dodd-Frank Act are of interest to our members because the rules could, both indirectly and directly, have a significant impact on their business operations and on the ability of consumers to purchase their products and services.

With regard to the potential indirect impact of the section 941 rules on our members (i.e., the aspects of the NPR that pertain to auto securitizers), NADA appreciates the agencies' efforts to develop risk retention rules that provide multiple options for auto securitizers to retain risk while "reducing the potential for the proposed rules to negatively affect the availability and costs of credit to consumers and to businesses."[2] However, NADA is very concerned that the risk retention options, as presently proposed, could undermine, rather than further, the agencies' stated goal. This concern is based on the reservations and the detailed critique of the proposed risk retention options that the motor vehicle sponsor members of the American Securitization Forum have expressed to the agencies.[3]

The motor vehicle sponsors, which are the funding source for a significant portion of motor vehicle dealers' floorplan lines of credit and for consumers who purchase and lease vehicles from motor vehicle dealers, have always retained risk for their ABS. NADA supports the view of the motor vehicle sponsors that the proposed risk retention options would unnecessarily impose additional layers of risk retention that could have "a number of significant, negative impacts," including an increase in dealers' floorplanning costs and in consumers' costs to purchase and lease vehicles from motor vehicle dealers.[4] NADA similarly supports the motor vehicle sponsors' view that the proposed exemption from the risk retention requirements for "Qualifying Automobile Loans"[5] fails to provide auto securitizers with a viable alternative to the proposed risk retention options.

As explained in our October 2010 comments to the Board, should the potential impacts identified by the auto securitizers occur, it would create significant distress within the auto sector of the economy and frustrate the overall economy's and the industry's fragile progress towards recovery from the credit crisis and other challenges that occurred over the last several years. Consequently, we urge the agencies to revise their risk retention options in a manner that ensures that the securitization market remains an efficient funding mechanism for auto securitizers.

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[2] 76 Fed. Reg. at 24,096.
[3] See pages 71-87 of the ASF Risk Retention Letter to Joint Regulators dated June 10, 2011, which are currently available at: http://www.sec.gov/comments/s7-14-11/s71411-57.pdf.
[4] Id., at 72.
[5] See § __.20 of the Text of the Proposed Common Rules.

With regard to the potential direct impact of the section 941 rules on our members (i.e., the aspects of the NPR that pertain to the allocation of retained risk to originators[6]), NADA supports the agencies' proposal to forego the mandatory allocation of such risk to originators. As explained in our October 2010 comments to the Board, such an allocation would not only fail to produce any public policy benefit as it pertains to three-party (indirect) vehicle financing transactions, but it would actually create inefficient redundancies, impose unnecessary costs, and weaken the cash flow position of franchised car and truck dealers who assign credit and lease contracts to finance source securitizers. NADA therefore urges the agencies to adopt their proposal to forego mandating the allocation of retained risk to originators.

Thank you for the opportunity to comment in this matter. Please contact our office if we can provide you with any additional information.

Paul D. Metrey
Chief Regulatory Counsel
Financial Services, Privacy, and Tax

[6] See § __.13 of the Text of the Proposed Common Rules.