Loan
Market
Association

10 Upper Bank Street
London E14 5JJ
Telephone +44 (0)20 7006 6007
Fax +44 (0)20 7006 3423
Email lma@lma.eu.com
www.lma.eu.com

By Electronic Submission

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 1-5
Washington, D.C. 20219

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

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

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
1700 G Street, N.W.
Washington, D.C. 20552

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, S.W.
Room 10276
Washington, D.C. 20410-0500

(the "**Agencies**")

1 August 2011

Re: Notice of Proposed Rulemaking, Credit Risk Retention
SEC (Release No. 34–64148; File No. S7–14–11); FDIC (RIN 3064–AD74); OCC (Docket No. OCC–2011–0002); FRB (Docket No. 2011–1411); FHFA (RIN 2590-AA43); HUD (RIN 2501-AD53)

Ladies and Gentlemen:

The Loan Market Association ("**LMA**") is writing to echo the concerns raised in the letter dated 1 August 2011 (the "LSTA Letter") issued by The Loan Syndications and Trading Association (the "**LSTA**") in response to the joint Notice of Proposed Rulemaking ("**NPRM**").[1] This letter relates to the credit risk retention requirements authorised by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "**Dodd-Frank Act**").[2]

---

[1] Credit Risk Retention; Proposed Rule, 76 Fed. Reg. 24090 (Apr. 29, 2011).

[2] Pub. L. No. 111-203, 124 Stat. 1376 (2010). Under section 941 of the Dodd-Frank Act, the authority to prescribe regulations implementing the risk retention requirements (other than for qualified residential

Registered in England and Wales as a company limited by guarantee with registered number 3284544
Registered office Pellipar House 1st Floor 9 Cloak Lane London EC4R 2RU

The LMA is the trade body for the European syndicated loan market and was founded in December 1996 by banks operating in that market. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing standards of documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at over 460 across Europe and consists of banks, non-bank investors, law firms, rating agencies and service providers. The LMA has gained substantial recognition in the market and has expanded its activities to include all aspects of the primary and secondary syndicated loan markets. It sees its overall mission as acting as the authoritative voice of the European loan market in Europe vis à vis lenders, borrowers, regulators and other interested parties.

The LMA is particularly concerned by the suggestion raised in footnote 42 of the preamble to the NPRM, which states that a sponsor's risk retention requirement may be imposed on CLO managers. We echo the concerns raised in the letter issued by the LSTA and fully support the LSTA's arguments which assert that this statement must either be removed or corrected and, to the extent necessary, be clarified to ensure that no risk retention requirement applies to the managers of independently managed CLOs who purchase syndicated commercial loans in the open market ("**Open Market CLOs**"). Alternatively, if the Agencies do not accept the LSTA's view that the risk retention provisions of Section 941 do not apply to Open Market CLO collateral managers, we urge the Agencies to exclude Open Market CLOs from the risk retention provisions on the basis described in the LSTA Letter.

In addition, we would also like to highlight the adverse impact that similar European legislation, imposed under Article 122a of Directive 2006/48/EC ("**Article 122a**") has had on the CLO market in Europe. We believe that this should serve as an effective case study against imposing retention requirements on Open Market CLOs in the US.

Article 122a

Article 122a provides that a European credit institution will suffer a punitive capital charge if it invests in a securitisation transaction in which the originator, sponsor or original lender does not hold a minimum of 5% of the net economic exposure of the transaction. The overarching objective of Article 122a is broadly the same as in the US, namely that it seeks to fundamentally reform the originate-to-distribute model and address complex and opaque securitisations with respect to which investors are not able to adequately assess the underlying risk. Unfortunately, the definition of securitisation used in Article 122a catches Open Market CLOs, an inclusion which was unexpected in the market, given that CLOs performed very well throughout the financial crisis and were historically considered to be one of the most reliable and efficient sources of funds in the syndicated loan market. Furthermore, Open Market CLOs differ fundamentally from the originate-to-distribute model of securitisation - this is on the basis that investment managers of Open Market

---

mortgages) is granted to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission (the "**Agencies**"). *See* Securities Exchange Act § 15G(b)(1), 15 U.S.C. § 78o-11(b)(1), as added by Dodd-Frank Act § 941(b) (providing that "the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party").

CLOs are asset managers, who select a diversified portfolio of corporate credits across diverse industry sectors and European geographies. The remuneration of these managers depends on careful credit selection. A portion of their fees may be "switched off" if they underperform and a portion of their total return is dependent on back-ended performance fees, carefully aligning the interests of investors and asset managers.

Perhaps not surprisingly therefore, the implementation of Article 122a has presented the European CLO market with considerable challenges. This is largely due to the fact that the vast majority of Open Market CLO managers do not have access to the capital necessary to fund the retention requirements themselves and are therefore no longer able to be actively participate in the loan market.

Impact of Article 122a on European CLOs

Since the implementation of Article 122a, we are aware of no new Open Market CLOs that have been issued and consequently, the sub-investment grade credit market has been starved of the liquidity traditionally provided by these vehicles (CLOs accounted for 38.3% of primary loan issuance in 2006). This is particularly worrying, given that Open Market CLO structures present one of the principal ways to provide funding to small and mid-sized corporates, aside from banks. In addition, given that the regulatory capital treatment of sub-investment grade loans under Basel III is likely to discourage banks from maintaining their current level of exposure to this sector, it seems clear that the funding gap in this market is only going to widen, which may well lead to serious consequences for the wider economy. Taken as a whole, it can only result in the deterioration of a market which remains fragile following the recent financial crisis, by impeding any potential recovery visible in the short-term.

Given the broad similarity between Article 122a and the US retention requirements, we are greatly concerned that all of these issues are likely to worsen if the US regulators apply retention requirements to Open Market CLOs in the US loan market. In particular, given that we are now operating in a global market where US and European borrowers seek funds outside of their national jurisdictions, this legislation is likely to have far-reaching consequences outside of the US, not least because US CLOs are also active players in the European markets.

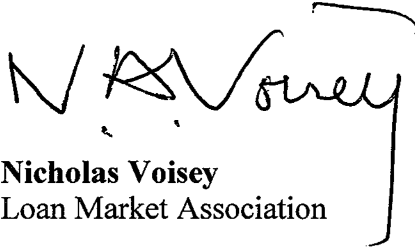
Conclusion

In view of the above, we firmly believe that unless the Agencies adopt the legal position regarding managers of Open Market CLOs expressed in the LSTA Letter or seek to exclude Open Market CLOs from the retention requirements of section 941 of the Dodd-Frank Act, the legislation will not only generate massive confusion and disruption for the Open Market CLO market generally, but it will also result in an evaporation of new Open Market CLO issuances, both in the US and globally. Since Open Market CLOs are a fundamental source of funding in the syndicated loan markets, particularly with regards to non-investment grade companies, their absence is likely to reduce the sources of credit that businesses rely on to grow and create new jobs, which in turn is likely to stifle growth in the global economy. We do not consider that any of these outcomes are intended by the Agencies. Consequently, we respectfully urge the Agencies to retract or correct the statement made in footnote 42 of the NPRM in relation to managers of Open Market CLOs or, alternatively, exclude Open Market CLOs from the risk retention provisions of Section 941 on the basis described in the LSTA Letter. This will provide the market with the degree of certainty it

requires to prevent any disruption, enabling Open Market CLOs to continue to serve the needs of borrowers in the loan markets as they have historically shown themselves to be consistently capable of doing.

We would be happy to discuss any aspect of this letter with you in more detail. If we can be of any further assistance, please do not hesitate to contact me via email at nicholas.voisey@lma.eu.com or by telephone on +4420 7006 5364.

Yours faithfully



Nicholas Voisey
Loan Market Association