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August 1, 2011

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

SEC Release No. 34-64148; File No. S7-14-11
Credit Risk Retention

Dear Ms. Murphy:

We appreciate the opportunity to respond to the Securities and Exchange Commission's (SEC or Commission) proposed rule regarding *Credit Risk Retention* (the Proposal or the Proposed Rule). We support the regulatory efforts of the Commission to increase the confidence in, and transparency of, the securitization markets. The Proposed Rule will implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934, as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 15G generally requires the securitizer of asset-backed securities to retain not less than five percent of the credit risk of the assets collateralizing the asset-backed securities. Our comments address specific requirements in the Proposal to offer insights about those matters that may prove challenging for independent public accounting firms and those for which additional guidance or clarification would be helpful.

The Commission's Proposed Rule permits a sponsor of a securitization transaction to meet its risk retention requirements by "retaining a randomly selected representative sample of assets that is equivalent, in all material respects, to the assets that are transferred to the issuing entity and securitized." The sample retained would consist of at least 5 percent of pool assets. Our comments and observations concentrate on this provision of the Proposed Rule and the requirement for the sponsor of the securitization to obtain an Agreed Upon Procedures report ("AUP report") from an independent public accounting firm that, at a minimum, reports on whether the sponsor has certain policies and procedures.

Agreed Upon Procedures

We are concerned that an AUP report from an independent public accounting firm may not be appropriate to assist in achieving the stated objective of ensuring the sponsor has constructed a representative sample consistent with the Proposal. Our concerns relate to the *restricted use* nature of an AUP report and the sufficiency of the *procedures* performed as further discussed below:

Restricted Use - The required procedures are to be conducted pursuant to agreed-upon procedures engagements in accordance with American Institute of Certified Public Accountants Statements on



Standards for Attestation Engagements 201, *Agreed-Upon Procedures Engagements* (AICPA, Professional Standards). An agreed-upon procedures engagement is one in which an independent public accounting firm is engaged to issue a report of findings based on specific procedures performed on subject matter. Because the needs of the specified parties may vary widely, the nature, timing, and extent of the agreed-upon procedures may vary as well; consequently, the specified parties assume responsibility for the sufficiency of the procedures since they best understand their own needs. As a consequence of the role of the specified parties in agreeing upon the procedures performed or to be performed, an independent public accounting firm's report on such engagements should clearly indicate that its use is restricted to those specified parties. Such engagements require the specified party to outline the particular procedures to be performed by the independent public accounting firm and take responsibility for the sufficiency of such procedures for their particular purpose. The restricted distribution is intended to prevent other parties from placing reliance on the report for purposes other than those specifically intended by those who engaged the independent public accounting firm and determined the nature and scope of the procedures.

As a result of adhering to the attestation standards, the AUP reports will not be general use reports and therefore would not be available to investors because the investors are not specified parties. An AUP report also includes language that alerts users to the limitations of an AUP engagement, specifically, that the independent public accounting firm has not conducted an audit and does not express an opinion. As opposed to expressing an opinion, or an overall conclusion, AUP reports only provide findings or results from the procedures performed. Investors would not have access to these reports and the limitations described therein, but would be aware of the AUP's existence and related implied procedures performed and results. However, investors would not have the opportunity to read the AUP report, which could result in investors inferring unwarranted assurance from the AUP engagement.

Procedures – The procedures listed in an AUP report are designed to compare actual information to pre-specified criteria that will be used in the determination of findings. As written in the Proposal, the independent public accounting firm would be required to include in the AUP report findings that the policies and procedures exist. However, the AUP report would not include procedures directed at the implementation, design or operating effectiveness of such policies and procedures. As a result, the specified parties would not be able to conclude on whether the selected sample is representative of the assets underlying the securitization based on the findings detailed in the AUP report.

Potential Alternatives

The Proposed Rule requests comments related to potential alternatives for the required AUP report. We believe the following are alternatives the Commission might wish to consider:

- An alternative that addresses both the restricted use and sufficiency of procedures concerns discussed above is to develop suitable criteria (as described in paragraphs 24-31 of AT Section 101, Attest Engagements, of the Statements on Standards for Attestation Engagements) that would enable the sponsor and the independent public accounting firm to measure and evaluate the design and operating effectiveness of the policies and procedures, and require the sponsor to obtain an examination level report under AT Section 101 from the independent public accounting firm regarding the design and operating effectiveness of the policies and procedures, based on the criteria. These reports could be made available for general use. The disadvantage of such an alternative is that the engagement would involve additional costs and effort relative to an AUP report.



- An alternative that addresses only the restricted use limitation is to have investors who wish to rely and access the AUP report agree to the sufficiency of the procedures prior to being provided access to the report.
- If an alternative can be developed that addresses the restricted use limitation of AUP reports, the concern about sufficiency of the procedures can be addressed by focusing the procedures on evaluating the existence, design and operating effectiveness of the securitizer's policies and procedures. Alternatively, the AUP report may focus on testing if the selected sample is representative of the pool of loans based on pre-defined criteria instead of focusing on the existence of policies and procedures.
- A third party other than an independent public accounting firm could be engaged to perform procedures not subject to professional standards. However, this approach would result in the loss of the advantages of using an independent public accounting firm that follows well-established professional standards to guide the performance of these engagements.

We appreciate the opportunity to submit our comments on the Proposal. If you have any questions regarding our comments or other information included in this letter, please do not hesitate to contact Glen L. Davison, (212) 909-5839, gdavison@kpmg.com or David Reavy, (212) 909-5496, dreavy@kpmg.com.

Very truly yours,

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Cc:

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RIN 1557-AD40

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