ALLY FINANCIAL INC.
AMERICAN HONDA FINANCE CORPORATION
BMW US CAPITAL, LLC
CARMAX BUSINESS SERVICES, LLC
FORD MOTOR CREDIT COMPANY LLC
GENERAL MOTORS FINANCIAL COMPANY, INC.
HARLEY-DAVIDSON FINANCIAL SERVICES, INC.
HYUNDAI CAPITAL AMERICA
MERCEDES-BENZ FINANCIAL SERVICES USA LLC
NAVISTAR FINANCIAL CORPORATION
NISSAN MOTOR ACCEPTANCE CORPORATION
SANTANDER CONSUMER USA INC.
TD AUTO FINANCE LLC (f/k/a CHRYSLER FINANCIAL SERVICES AMERICAS LLC)
TOYOTA MOTOR CREDIT CORPORATION
VW CREDIT, INC.
WORLD OMNI FINANCIAL CORP.

August 1, 2011

Officer of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219
regs.comments@occ.treas.gov
Re: Credit Risk Retention
(Docket Number OCC-2010-0002)

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
rule-comments@sec.gov
Re: Credit Risk Retention
(Rel. No. 34-64148; File No. S7-14-11)

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov
Re: Credit Risk Retention
(Docket No. R-1411)

Alfred M Pollard, General Counsel
Attention: Comments/RIN 2590-AA43
Federal Housing Finance Agency
1700 G Street, NW, Fourth Floor
Washington, DC 20552
RegComments@fhfa.gov
Re: Credit Risk Retention
(Comments/RIN 2590-AA43)

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
comments@FDIC.gov
Re: Credit Risk Retention
(RIN 3064-AD74)

Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500
Re: Credit Risk Retention
(HUD No. 11-049)

Ladies and Gentlemen:

The finance companies listed above ("we" or the "Vehicle ABS Sponsors") submit this letter to comment on the Proposed Rule relating to Credit Risk Retention identified above (the "Proposal") released jointly by the Office of the Comptroller of the Currency (Department of the Treasury), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the Federal Housing Finance Agency and the Department of Housing and Urban Development (together, the "Agencies"), by reference both to the commentary on the Proposal and the text of the proposed common rules (the "Proposed Rules"). The Vehicle ABS Sponsors provide financing for automobiles, trucks and motorcycles (collectively, "vehicles"). We fund our businesses in part through the issuance of asset-backed securities ("ABS") backed by vehicle-related assets ("Vehicle ABS"). We focus in this letter on issues that are of particular interest to us as active issuers of Vehicle ABS.

The Financial Crisis and the Call for Mandated Risk Retention

We recognize that the financial crisis exposed flaws in certain sectors of the ABS market. In particular, it became evident that problematic practices arose in the origination of certain types of residential mortgage and home equity loans and the design of ABS backed by those loans (collectively, "RMBS") and collateralized debt obligations backed principally by RMBS ("RMBS CDOs"). We also recognize that these problems were contributed to by the fact that neither the originators of the assets backing those securitizations nor the sponsors of the securitizations retained any significant exposure to the assets or ABS after the securitizations were executed.

We agree that when a party originates receivables but retains no, or very limited, risk when they are securitized, then that party may have little incentive to originate high quality receivables. When a sponsor keeps "skin in the game," interests between the securitization's participants—the originator, the sponsor, the servicer and its investors—are more aligned and investors will benefit from a well-structured and properly managed transaction. Therefore, requiring that sponsors retain ongoing economic interests in their securitizations is logical, effective and, under the right conditions, efficient.

In contrast to RMBS and RMBS CDOs, sponsors of Vehicle ABS traditionally have maintained significant exposure to their securitizations, generally by retention of interests that are similar to the "eligible horizontal residual interests" described in the Proposal. Because of the sound, well-established securitization structures that we have employed for over two decades, Vehicle ABS have performed extraordinarily well throughout the history of the securitization markets, including during the recent financial crisis. Pricing spreads on Vehicle ABS have largely returned to pre-crisis levels due to the resilience and simplicity of Vehicle ABS structures and the quality of the underlying collateral. As a result, the Vehicle ABS market is today the most vibrant portion of the U.S. ABS market, representing approximately 37% of all ABS

issuances, and 52% of all consumer ABS issuances, between January 1, 2009 and June 30, 2011.[1]

We believe that the risk retention we currently employ in our transactions meets the goals set forth in the Proposal. Because Vehicle ABS is a mature, well-performing asset class where risk retention is already the norm, we are very hopeful that the Proposed Rules will be revised so that they better reflect the time-proven risk alignment structures that we use and that have developed since Vehicle ABS were first issued in the mid 1980s. In the Term Asset-Backed Securities Loan Facility (TALF), the Federal Reserve Bank of New York's recognized that "appropriate structural and transactional features may differ significantly across asset categories," and we believe that tailoring the Proposed Rules to reflect the features that have traditionally been relied upon in the Vehicle ABS sector is both prudent and appropriate.[2] In fact the Board of Governors of the Federal Reserve System's "Report to the Congress on Risk Retention" (released October 2010) acknowledges the strong performance of Vehicle ABS structures. The Report noted that even though delinquency rates significantly increased during the economic downturn,

> "[a]uto loan and lease ABS structures are designed to withstand [such] level of stress, and almost all performed well during the financial crisis. . . . This strong performance is partly a function of the auto ABS structure. Because the underlying loans [and leases] pay down fairly quickly, the level of credit enhancement increases over the life of the deal as the senior tranches pay down much quicker than the subordinate tranches."[3]

If the Proposed Rules are not modified to allow risk retention by these time-tested means and sponsors of Vehicle ABS are instead forced to incur substantial expense to restructure their securitizations and/or retain additional exposures, most of us would likely reduce our use of ABS. As the vast majority of auto industry sales are financed through Vehicle ABS, if this were to occur, it would have unintended consequences on all participants in the vehicle marketplace. We would become less competitive with banks and our individual and business customers would face a more constricted credit market, meaning that they would have fewer financing options and higher costs for purchasing or leasing vehicles. Vehicle dealers, which constitute a large number of the nation's small businesses[4], would also face restrained and more expensive credit in financing their vehicle inventory and assisting their customers with financing choices. Also, the

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[1] Source: Barclays Capital Inc. Consumer ABS issuances includes all auto, equipment loan and lease, credit card and student loan securitizations together with new-issue securitizations of prime, subprime and Alt-A mortgage loans but excludes esoteric ABS issuances (e.g., aircraft, fleet lease and whole business securitizations)

[2] The Federal Reserve Bank of New York further noted that "[w]ithin an asset category . . . bonds will be reviewed relative to generally accepted prudent market practices in the areas of: credit support; issuer and servicer strength; underwriting; diversification (geographic, borrower, or other); and simplicity of structure." (*Risk Assessment Principles for Non-Mortgage-Backed ABS* http://data.newyorkfed.org/markets/talf/Risk_Assessment_Principles.pdf).

[3] *Report to the Congress on Risk Retention*, Board of Governors of the Federal Reserve System, October 2010, page 57.

[4] The National Automobile Dealers Association reports on its website that new-car dealers employ about 1 million people in the U.S. (*http://www.nada.org/AboutNADA/*).

vehicle manufacturers whose sales we support would likely sell fewer vehicles, which would be detrimental to job growth and capital investment during a fragile economy. Finally, investors would have fewer investment opportunities in asset classes that have consistently demonstrated their soundness, even in times of economic distress and market disruption.

We also appreciate the Agencies' efforts to establish a class of "qualifying automobile loans" that could be securitized in a manner that would not require a statutorily-mandated level of risk retention. For the reasons set forth above, we believe that Vehicle ABS is a consistently strong asset class. This is especially true for Vehicle ABS backed by prime retail vehicle loans, a subclass that performs so well that a reduced risk retention mandate is appropriate. However, we believe that the exemption set forth in the Proposal for qualifying automobile loans is unusable in its present form in that it does not reflect underwriting and origination practices in the retail vehicle loan market. Unless the Proposed Rules are revised—either to adopt an approach that focuses on pool-wide characteristics rather than loan-by-loan features and asset-origination methodologies or to significantly reduce and revise those loan-level characteristics that must be satisfied to have a "qualifying automobile loan"—we cannot envision the exemption ever being utilized by any of us or by any other Vehicle ABS sponsor.

While we strongly support the goal of making the securitization market stronger and more sustainable by mandating risk retention, we believe that the Proposal imposes too great a burden on Vehicle ABS by neither recognizing the highly effective risk retention that we currently employ nor providing a practical exemption for those Vehicle ABS that merit a partial exclusion from the Proposed Rules. We therefore respectfully submit that the changes set forth below be made to better tailor the Proposed Rules for the Vehicle ABS marketplace.

Background on the Vehicle ABS Sponsors

The Vehicle ABS Sponsors are the 16 finance companies listed at the top of this letter. We include all of the captive finance companies of the major automobile and motorcycle manufacturers, leading independent automobile finance companies and the leading issuer of ABS backed by medium and heavy duty trucks. The group includes issuers of prime and subprime automobile and motorcycle retail loan and lease ABS and floorplan loan ABS. Traditional, full-service banks, which have highly diversified portfolios of assets of which retail loans, retail leases and dealer floorplan loans represent a relatively small part, are the only significant sponsors of Vehicle ABS that are not included in this group.

All of the Vehicle ABS Sponsors use the ABS market for some portion of their funding. We issue term Vehicle ABS in public and/or Rule 144A transactions and many of us also issue privately placed notes with institutional investors to access revolving "warehouse" credit and multi-seller asset-backed commercial paper conduits. The ABS markets are attractive and reliable sources of funding for this group. Many of us are frequent issuers, while others issue more selectively. But all of us believe that it is critically important to have a deep and liquid securitization market that can be accessed readily by the Vehicle ABS Sponsors.

The Vehicle ABS we issue[5] constitutes a significant portion of the overall Vehicle ABS market in each of our asset classes in the United States, as demonstrated by the following table:

Issuance Levels in Vehicle Term ABS Sectors in U.S. Market (January 1, 2009 - June 30, 2011) ($ millions)			
Sector	**Vehicle ABS Sponsors**	**Total Issuance**	**Vehicle ABS Sponsors %**
Prime Retail Auto	69,856	88,066	79.3%
Subprime Retail Auto	15,776	18,937	83.3%
Auto Lease	19,783	19,945	99.2%
Auto Floorplan	11,361	12,221	93.0%
Retail Equipment	1,171	17,867	6.6%
Equipment Floorplan	600	2,430	24.7%
Retail Motorcycle	3,023	3,062	98.7%
Vehicle ABS Total	121,570	162,528	74.8%

Source: Barclays Capital Inc.

Some members of our group have been issuing ABS backed by retail loans, leases and floorplan loans backed by vehicles for over 25 years. During that time, the performance of the ABS we have issued has been exemplary. We can state positively that every matured term Vehicle ABS—including non-investment grade Vehicle ABS—that has been issued by any Vehicle ABS Sponsor has repaid all principal and interest in full. We expect the same will be true for all currently outstanding term Vehicle ABS that we have issued. We consider this performance to be noteworthy, given the period of time over which Vehicle ABS issuance has occurred and the varying economic conditions during that period.

Our ABS have demonstrated excellent performance on a sustained basis. None of our term transactions has had a servicer replaced, other than when the servicer was acquired by another company (in which case, the acquirer became the servicer). Additionally, with only one exception,[6] none of our term transactions has ever had an event of default occur and with only one exception,[7] none of our term transactions has ever had an amortization event occur in a floorplan transaction as a result of problems with pool performance.

None of the Vehicle ABS we have issued has missed any payments. In the automobile ABS sector, there have been many more upgrades than downgrades as a result of our conservative deal structures in which credit enhancement often increases throughout the life of the transaction. During the period from January 1, 2001 through June 30, 2011, Standard & Poor's issued 687 upgrades of classes of retail automobile loan ABS, compared to just 39

[5] The ABS issued by all of the Vehicles ABS Sponsors other than Navistar Financial is conventionally considered to be automobile ABS, while the ABS issued by Navistar Financial is grouped in the equipment category.

[6] Certain auto lease ABS issued by a Vehicle ABS Sponsor did experience an event of default due to a bankruptcy event with respect to the parent corporation, not as a result of pool performance. Nonetheless, all investors in those ABS were paid in full.

[7] One floorplan ABS issued by a Vehicle ABS Sponsor went into early amortization as a result of its payment rate dropping below a specified level. In that transaction, all investors were paid in full. Amortization events are relevant only to floorplan ABS transactions; there is no corresponding concept in term ABS transactions involving retail loans or leases.

downgrades for pool credit related reasons.[8] In addition, no defaults have occurred on any prime retail automobile loan ABS rated by S&P since they began rating automobile ABS in 1985 and only four defaults (one default in each of 1998 and 2002 and two defaults in a single transaction in 2011) have occurred on subprime retail automobile loan ABS rated by S&P, all of which were defaults on non-investment grade bonds and unrelated to any Vehicle ABS Sponsor signing this letter.

This outstanding and consistent performance has earned us a loyal following among investors, who have been consistent purchasers of our Vehicle ABS even in times of economic distress and market disruption. We have been frequent ABS issuers throughout all economic cycles. A few years ago, Vehicle ABS was an important, though not dominant, part of the ABS market. For example, in 2005, all Vehicle ABS (including all issuers, not just the Vehicle ABS Sponsors) represented approximately 13% of the overall U.S. term ABS market.[9] Since the onset of the financial crisis, however, Vehicle ABS has become the most active sector of the U.S. term ABS market. The following table shows ABS issuance for the past two-and-a-half years:

Issuance Levels in Total U.S. Term ABS Market by Asset Class
(January 1, 2009 – June 30, 2011) ($ millions)

Category	Total Issuance	Market Share
Prime Auto Retail	88,066	23%
Subprime Auto Retail	18,937	5%
Auto Lease	19,945	5%
Auto Floorplan	12,221	3%
Auto – Other	3,062	1%
Subtotal: All Auto	**142,232**	**37%**
All Equipment	20,297	5%
Credit Card	58,300	15%
Student Loan	50,207	13%
CMBS[10]	32,175	8%
RMBS[11]	15,743	4%
All Other	63,965	17%
TOTAL	**382,918**	**100.0%**

Source: Barclays Capital Inc.

Throughout 2010 and through the first half of 2011, the dominance of Vehicle ABS is even more notable. Vehicle ABS issuance from January 1, 2010 through June 30, 2011 totals approximately $99 billion out of a total ABS issuance of $200 billion, which represents approximately 49.5% of the overall U.S. term ABS market.[12] In contrast, the RMBS sector has had very limited new issuance, while the RMBS CDO sector has had no new issuance due to a lack of credit and liquidity.

[8] Downgrades due to the downgrade of a credit support provider (such as a monoline insurer) are not included in this data.

[9] Source: JPMorgan Securities, Inc.

[10] CMBS issuance figure excludes agency issuance.

[11] RMBS issuance figure excludes agency and re-RMBS issuance.

[12] Source: Barclays Capital Inc.

We regard the market-leading level of Vehicle ABS issuance as a testament to the soundness of our transactions. We continue to enjoy strong investor demand for our ABS, with many of our recent public securitizations having more than 50 initial investors. For recent prime retail automobile ABS transactions, pricing spreads have largely returned to the levels at which we priced ABS prior to the financial crisis. Prime retail automobile loan ABS issuance volume, as a percentage of new vehicle sales, is at the same level as it was prior to the financial crisis. The subprime retail automobile loan ABS market has also recovered, though not yet to pre-crisis levels. All of us want to continue to issue term Vehicle ABS, and we believe investors want to continue to purchase our term Vehicle ABS. But our overall term issuance will likely decline if the added expense of risk retention measures that are over-and-above those we already successfully employ is too high.

Background on Vehicle ABS Structures

The Vehicle ABS sector is comprised of securitizations of retail loans, retail leases and floorplan loans. We refer to certain aspects of each of these structures throughout the following comments on the Proposal. For your convenience, the following is a brief description of the basic structural features of each of these securitizations.

In virtually all Vehicle ABS securitizations, the ABS interests that are issued to investors are notes that are secured by the underlying property of the issuing entity. We use the term "ABS notes" to denote these ABS interests (recognizing that, as we describe below, depositors will sometimes retain all or a portion of one or more subordinated classes of ABS notes if market conditions at closing are not favorable for selling them). The remaining interest in the issuing entity in retail loan and lease transactions is a residual interest that we refer to as the "subordinated residual interest." In a floorplan securitization using a master trust, the depositor typically retains a seller's interest in the entire master trust as well as, for each series, a subordinated residual interest and/or class of subordinated ABS notes.

Retail Loan Securitizations

In a typical retail loan securitization, the sponsor originates loans, or buys loans from an affiliate that originated them in accordance with the sponsor's underwriting guidelines. Most auto loans included in retail loan securitizations are retail installment sale contracts with a term of no longer than 72 months, that charge a fixed rate of interest and that require even monthly payments over the term of the loan. The sponsor is the owner of the depositor entity. At the time of the securitization, the sponsor sells the loans to the depositor and the depositor, in turn, sells the loans to the issuing entity, which is typically a Delaware statutory trust. The ownership interest in the issuing entity is generally retained by the depositor. The issuing entity then issues the ABS notes and pledges the loans to an indenture trustee for the benefit of the noteholders. In almost all cases, the sponsor is hired to service the loans. This contrasts with RMBS transactions where the originator, the sponsor and/or the servicer are very often unaffiliated entities and where, after selling the mortgages it originated, the originator regularly has no further economic interest, and often no servicing obligations, with respect to them.

Collections on the securitized retail loan pool for each monthly collection period are distributed on monthly payment dates according to a single waterfall. The waterfall provisions

for retail loan securitizations typically distribute collections in the following order: (i) trustee fees, servicer fees and regular payments to swap providers (in deals featuring floating rate notes) at the most senior levels; (ii) interest on the notes in descending order of seniority; (iii) principal on the notes in descending order of seniority to reflect the decrease in the pool balance during the prior month; (iv) deposits or payments to maintain credit enhancement by funding reserve accounts and overcollateralization (as described below); (v) subordinated fees due to trustees, swap providers, etc.; and (vi) remaining collections (if any) to the holder of the subordinated residual interest. The depositor, as holder of the subordinated residual interest, therefore holds a horizontal residual interest in the securitization. In certain transactions, the depositor also retains the most junior tranche or tranches of notes, which receive interest and principal on each monthly payment date, but only to the extent that all more senior classes have been fully paid the interest and principal, respectively, that they are entitled to on that date.

This straightforward, single-waterfall cash distribution mechanism is in contrast to RMBS transactions, which generally feature far more complicated payment structures where interest and principal collections on the mortgages, excess cashflow and principal prepayments are each distributed according to separate waterfalls on monthly payment dates. Many RMBS structures are tranched into tiered classes and can include classes entitled only to interest collections or prepayment collections received on the mortgages. RMBS structures also typically calculate a pool loss amount for each collection period that is applied in reverse order of seniority on each monthly payment date.

Credit enhancement in a retail loan securitization typically consists of a reserve account, overcollateralization and excess spread (all of which are retained by the depositor in the form of the subordinated residual interest) and, for senior ABS notes, subordination of one or more classes of ABS notes (some of which may be retained by the depositor). On the closing date, a portion of the proceeds from the sale of ABS notes to investors is usually deposited into the reserve account in an amount equal to a specified percentage of the initial pool balance (generally between 0.25% and 2.0%) and that amount can then be increased or maintained with deposits from the waterfall. Amounts are drawn from the reserve account to pay interest on the ABS notes, certain principal payments on the ABS notes and certain securitization fees if collections on the loans are insufficient.

Two key forms of credit enhancement are overcollateralization and excess spread. Overcollateralization is the amount by which the pool balance exceeds the outstanding principal amount of the ABS notes. Overcollateralization will exist on the closing date if the principal amount of the ABS notes issued is less than the initial pool balance and may also be increased over time if principal payments on the ABS notes outpace the loan pool's amortization. To the extent that more interest is collected on the loan pool than is needed to pay the securitization's senior fees and ABS note interest, that extra interest, or "excess spread," will be available to cover losses or delinquent payments each month and to make accelerated principal payments on the ABS notes to build overcollateralization.

Although overcollateralization and excess spread appear on the surface to be distinct forms of credit enhancement, they are in fact two sides of the same coin, dependent just on the means by which the transaction is structured. This interchangeability is illustrated by a comparison of two different methodologies that are used in retail loan securitizations to

compensate for the presence of significant concentrations of low interest rate, or "low APR," loans in some pools.[13] Although each methodology would create essentially equal amounts of credit enhancement for a given pool, the relative amounts of overcollateralization and excess spread can differ substantially, as we illustrate in Annex B. For this reason, we encourage the Agencies later in this letter to treat both overcollateralization and excess spread as permissible forms of credit enhancement, without seeking to draw distinctions between the different forms.

Retail Lease Securitizations

Retail lease securitizations are structured to allow for the securitization of both the stream of rent payments on the related leases and the proceeds that are received when the related leased vehicles are sold at the end of the lease term. Because it would be very difficult and expensive to transfer ownership of the leased vehicles to an issuing entity in connection with a securitization, a different structure is utilized than for retail loan securitizations.

Retail leases are typically originated by a special purpose entity, commonly referred to as a "titling trust," that is a subsidiary of the sponsor. The sponsor funds the titling trust's acquisition of leases and leased vehicles and in return either takes back an increased equity interest in the titling trust or realizes a corresponding increase in a debt obligation that the titling trust owes to it. At the time of the securitization, the sponsor directs that a particular pool of leases and leased vehicles be allocated to the securitization and collections on that pool will be used to make payments on a security issued by the titling trust. That security is generally either a special unit of beneficial interest (SUBI), which represents a beneficial interest in the specified pool of leases and leased vehicles, or a note that is secured by the specified pool. The sponsor or an affiliate is the initial owner of that security, which is then sold to the depositor and re-sold by the depositor to the issuing entity, which is typically a Delaware statutory trust. As in retail loan securitizations, typically the sponsor is the owner of the depositor, the depositor is the owner of the issuing entity, the sponsor is hired to service the leases, the issuing entity issues ABS notes pursuant to an indenture and the issuing entity pledges its assets (in this case, the security issued by the titling trust) to the indenture trustee for the benefit of the noteholders.

Collections on the securitized lease pool for each collection period are distributed on monthly payment dates. Generally, the collections on the related pool of leases and leased vehicles are paid by the titling trust to the issuing entity (in its capacity as the owner of the security issued by the titling trust that is backed by that pool) and those collections are then applied by the issuing entity pursuant to a waterfall that is similar to a retail loan securitization waterfall. The ownership interest in the issuing entity that is held by the depositor in a retail lease securitization is also the horizontal residual interest in the securitization.

As in retail loan securitizations, retail lease securitizations also typically feature reserve accounts, overcollateralization and excess spread as credit enhancement. A principal difference between retail loan and retail lease securitizations arises in valuing the lease assets. In a retail loan securitization, as explained above, the starting point for determining the pool balance is the principal balance of each loan. Because leases do not have principal balances, sponsors instead

[13] Low APR loans are often the result of subvention programs offered by vehicle manufacturers, which can result in retail loans with annual percentage rates, or "APRs," as low as 0.0%.

calculate a "securitization value" for each lease that represents the discounted present value of (i) the future payments to be received on the lease and (ii) an assumed value to be received for the leased vehicle at the end of the lease term.

Floorplan Securitizations

The general structure of floorplan securitizations is similar to retail loan or retail lease securitizations. The sponsor is typically the originator of the receivables, sells the receivables to the depositor, and is the direct owner of the depositor. The depositor is typically the direct owner of the issuing entity and transfers the receivables to the issuing entity in exchange for securities issued by the issuing entity, including the residual interest in the issuing entity. As described in greater detail below, the issuing entity is typically a Delaware statutory trust that is also a master trust that issues multiple series of ABS notes. The floorplan receivables to be included in the master trust are generated under revolving accounts or other revolving lending arrangements between the originator and the motor vehicle dealer, and a separate receivable is generally created for each vehicle that is financed in the dealer's floorplan. In some cases, however, the receivables may be loans relating to a portion of the dealer's inventory or may be indirect interests in the dealer obligations, such as participation interests.

In addition, some floorplan master trusts may hold a collateral certificate or other indirect interest in a separate trust that holds the floorplan receivables. This arrangement is similar to the titling trust arrangement for retail lease transactions. Under this type of arrangement, collections on the receivables are transferred from the trust holding the receivables to the master trust based on its interest in the receivables-holding trust. In almost all cases, the sponsor is hired to service the floorplan receivables that are held by the related trust.

At the time a master trust is created, certain of the originator's dealer accounts are designated for inclusion in the master trust. This means that as receivables are generated from time to time under the designated dealer accounts, they are sold by the originator to the depositor and then sold or transferred by the depositor to the master trust. Although scheduled repayments of floorplan receivables may be required under certain circumstances, floorplan receivables generally are not paid according to a specified schedule or on a predetermined date, rather the entire balance of a floorplan receivable is paid in full upon the sale by the dealer of the related financed vehicle.

From time to time, some of the receivables generated under a dealer account will not be eligible receivables as defined by the transaction documents. In some transactions these ineligible receivables are not sold to the depositor and the master trust and are retained by the originator. In other cases, for administrative convenience the ineligible receivables are transferred to the master trust, but are not included in calculating the receivables balance of the master trust, and losses and collections on these receivables are not allocated to investors.

The issuing entities used in floorplan securitizations are generally master trusts that issue multiple series of ABS notes, each series containing both senior and subordinate ABS notes. In addition, each series will generally have a residual interest that represents the overcollateralization, or required subordinated amount, for that series. This interest may be in the form of a certificated trust interest, an uncertificated interest, a deeply subordinated ABS note

or another form. The master trust must at all times maintain an asset balance that is not less than the sum of (i) the principal amount of all outstanding series of ABS notes plus (ii) the required subordinated amount for each such series. Any excess amount is allocated to the seller's interest. If the balance of the eligible receivables falls, the master trust must retain principal collections in the form of cash or other eligible investments in order to maintain the required asset balance. These funds are generally held in a cash collateral account.

Collections received on the receivables held by the master trust generally are divided into principal collections and interest collections (or non-principal collections). Each series issued by the master trust is allocated a percentage of the principal and interest collections received, and of the losses incurred, on the receivables. These collections and losses are then allocated among the various classes of ABS notes and the seller's interest in accordance with the transaction documents. The percentage allocated to each series is generally determined by dividing (1) the sum of outstanding amount of the ABS notes in that series plus the required subordinated amount for that series by (2) the asset balance of the master trust (i.e., the sum of the receivables balance and the cash collateral amount). For example, if a master trust had a receivables balance of $900 million and two outstanding series, one with an outstanding note amount of $200 million and required subordination of 30% (or $60 million), and a second with an outstanding note amount of $300 million and required collateralization of 25% (or $75 million), series one would be allocated 260/900 (or about 28.9%), series two would be allocated 375/900 (or about 41.7%), and the depositor would be allocated the remaining 265/900 (or about 29.4%) of the principal and interest collections and of any losses. In many of these master trusts, the required subordination for each series (the 60/900 or 6.7% for series one and the 75/900 or 8.3% for series two) is also considered part of the residual or seller's interest. In this respect, the seller's interest may consist of a subordinated portion and an unsubordinated portion.

In other master trusts, there is no separate residual interest at the series allocation level, and the residual interest is an aggregate of the residuals allocated to each series. For such a master trust, the initial allocation to each series is based on the relative outstanding note amounts and required subordination amounts for each series. For example, for a master trust similar to the one described above, the allocation percentage would be 260/635 (or 40.9%) for series one and 375/635 (or 59.1%) for series two. At the series level, the collections allocated to each series would then be split between the portion allocable to the investors and required subordination (which is available to investors) and the remainder of which would be allocated to the holder of the residual interest and is not available to investors. In this example, series one would allocate 260/(900*40.9%), or 70.6%, of its allocation of collections to the noteholders (which is 70.9% of 40.9%, or 28.9% of all trust collections) and 29.4% of its allocation of collections to the holder of the residual interest (which is 29.4% of 40.9%, or 12.0% of all trust collections). Series two would allocate 375/(900*59.1%), or 70.6%, of its allocations of collections to the noteholders (which is 70.6% of 59.1%, or 41.7% of all trust collections) and the remaining 29.4% to the holder of the residual interest (which is 29.4% of 59.1%, or 17.4% of all trust collections). Thus, the unencumbered residual interest is 12.0% plus 17.4% or 29.4%, the same as in the example in the preceding paragraph.

In general, the ABS notes issued in floorplan transactions have bullet maturities, rather than monthly amortization. This means they have a revolving period during which only interest payments are made and a target payment date on which the entire outstanding principal amount

is expected to be paid together with the final payment of interest. During the revolving period, principal collections allocated to the series are used to purchase additional receivables in order to maintain the master trust receivables balance at the required amount. Only during the last several months before the targeted payment date are principal collections allocated to the series accumulated to make the principal payment on the ABS notes. Interest collections, on the other hand, are used each month to make payments of interest on the securities, swap payments, cover losses and pay other amounts.

In addition to required subordination, credit enhancement for a floorplan securitization may also include a reserve account and excess spread generated by the series' share of interest collections. A series may also benefit from other credit enhancements that are generally series specific and are not available to investors of other series.

Summary of Comments

In the following section we set forth certain changes to the Proposed Rules that will make them more properly applicable in the Vehicle ABS marketplace. The principal revisions that we set forth below are:

- Eligible Horizontal Residual Interest Definition: We suggest that:
  - Clause (1) should be modified (1) to apply only to transactions with an explicit loss allocation mechanism, in order to accommodate most retail loan and retail lease securitizations that have implicit loss allocation (Section I.A.1) and (2) to properly accommodate floorplan securitizations (Section I.A.2);
  - Clause (2) should be modified to clarify that certain subordinated ABS notes that have the most subordinated right to receive interest among the ABS notes and that also have the most subordinated right to receive principal among the ABS notes may be retained as a component of an eligible horizontal residual interest (Section I.A.3) and to reflect the structures most commonly used for master trust securitizations (Section I.A.4) and securitizations featuring revolving periods (Section I.A.5); and
  - Because the limitation on principal distributions set forth in clause (3) does not work properly for transactions that do not feature separate waterfalls for interest, "scheduled" principal and "unscheduled" principal distributions, that clause should be modified so that it is workable for securitizations with single waterfalls, which is typical for retail loan and retail lease ABS (Section I.A.6).
- Calculating the Value of an Eligible Horizontal Residual Interest: We request confirmation that the "par value" of a residual ABS interest may be calculated in any reasonable way, including through a "discounted cashflows approach" (as described in Section I.B.1) or a "balance sheet approach" (as described in Section I.B.2);
- Reserve Accounts: We propose certain revisions so that amounts that are held in reserve accounts of the type that are presently used in the Vehicle ABS marketplace could be counted as a component of an eligible horizontal residual interest (Section I.C);

- Representative Sample: We set forth a streamlined version of the representative sample form of risk retention that would require only that the unsecuritized pool be selected from the same pool of assets as those comprising the asset pool, with the same selection criteria utilized and with no adverse selection permitted (Section I.D);

- Seller's Interest: We propose a variety of revisions that would better encompass the types of assets and structures commonly used by the Vehicle ABS Sponsors in their floorplan securitizations (Section I.E);

- "Blended" Risk Retention: We suggest that a sponsor should be allowed to maintain its required risk retention through any combination of the permissible forms of exposure rather than limiting it only to a combination of horizontal and vertical risk retention (Section I.F);

- Maintaining Exposures: We seek confirmation that a sponsor must maintain a minimum fixed percentage of exposure to a securitization, rather than a minimum fixed amount of exposure, and acknowledgement that the restrictions on hedging do not apply to ABS interests previously retained to comply with the risk retention requirements so long as the sponsor continues to hold the minimum required percentage of exposure (Section I.G);

- Reduced Mandatory Risk Retention: We set forth a pool based approach for reduced risk retention to supplement the Qualifying Automobile Loan provisions which, if satisfied, would reduce a sponsor's mandated level of risk retention to 2.5% (Section II.B);

- Qualifying Automobile Loan Provisions. We set forth a significantly modified approach to securitizations of Qualifying Automobile Loans that reflects current origination standards for top-quality automobile loans and allows for pools with a combination of qualifying and non-qualifying loans, with a corresponding reduction in the risk retention requirement that reflects the portion of the pool that represents Qualifying Automobile Loans (Section II.C);

- Asset-backed Commercial Paper Conduits: We ask for several changes to the definition of "eligible ABCP conduit" and the terms of Section __.9 of the Proposed Rules. We ask that (i) the requirement to disclose the names of originator-sellers to investors be eliminated; (ii) intermediate SPVs be permitted to sell interests both to eligible ABCP conduits and to other types of investors; (iii) Section __.9 not require "double risk retention" by requiring originator-sellers to hold 5% risk retention when the rules already require ABCP conduit sponsors to hold 100% liquidity facilities; and (iv) if our suggestion in (iii) is not adopted, originator-sellers be entitled to use any generally permitted form of risk retention in ABCP conduit transactions, rather than being required to hold an eligible horizontal residual interest (Section III); and.

- Re-proposal: We request that the Proposed Rules be re-proposed for further review and comment by market participants, even if the comment period provided for the re-proposed rules is very short or the enactment period for the final rules must be shortened as a result (Section IV).

Approximately half of the Vehicle ABS Sponsors are also members of the American Securitization Forum and participated in drafting both the Auto ABS section of the Comment Letter that organization submitted on June 10, 2011 and the supplemental Comment Letter on Qualifying Automobile Loans it will submit on or about August 1, 2011 (the "ASF Letters"). While the proposals in this letter are similar in many respects to proposals set forth with respect to Vehicle ABS in the ASF Letters, certain of the proposals described throughout the next section reflect further discussions this group has held since the initial ASF Letter was submitted and also reflect the opinions of those of us who are not members of that organization.

Comments on the Proposal

We have the following comments on the Proposal:

I. Proposed Forms of Risk Retention for Vehicle ABS

We have identified major problems with many of the Proposed Rules. First and foremost, we are concerned that the form of risk retention that is almost universally used today in the vehicle securitization market—horizontal exposure—was proposed in a way that is inconsistent with the way horizontal exposure is currently structured and retained for all Vehicle ABS. The horizontal exposure option will need to be revised and clarified significantly to be a workable option for Vehicle ABS. Cash-funded reserve accounts are used today in most Vehicle ABS and the Proposed Rules governing that option also need to be modified so that reserve accounts can continue to be used as a valuable form of risk retention in these transactions. Representative samples are a potentially useful form of risk retention for vehicle securitizations, but those Proposed Rules were also drafted in a way that renders that form unattractive to us and it is highly unlikely to be used by us or in the Vehicle ABS marketplace generally unless the Proposed Rules are modified. We have also identified problems with the Proposed Rules for retaining a seller's interest that need to be corrected to make that option usable by those automobile floorplan securitizations that utilize a minimum seller's interest as a form of credit enhancement. Finally, we believe that the Proposed Rules should be revised to allow greater flexibility to combine different forms of risk retention, which would achieve the stated goals of risk retention while reflecting the current structures of Vehicle ABS transactions. With these changes, we believe that we would have access to a menu of options that would achieve the goals of risk retention while also providing the necessary flexibility to ensure that we are able to fund our origination businesses efficiently through the issuance of Vehicle ABS, even if the securitization market changes over time.

A. Horizontal Risk Retention: Definition of "Eligible Horizontal Residual Interest"

As described above, in Vehicle ABS, the sponsor or an affiliate[14] generally retains ownership of the bottom of the waterfall, or first-loss position, in the transaction by holding a

[14] As described above, in almost all Vehicle ABS the residual interests are held throughout the life of the transaction by the depositor, which is a consolidated affiliate of the sponsor. In many cases this arrangement is necessary for the bankruptcy treatment of the securitization that investors and rating agencies demand. Because transfers to such consolidated affiliates would be permitted at any time pursuant to the Proposed Rules, we believe that it would also be appropriate to ***modify the Proposed Rules so that any risk retention can initially be held by those consolidated affiliates as well***.

subordinated residual interest. A subordinated residual interest is an equity interest in the related issuing entity that is subordinated to all tranches of issued ABS notes of the related series and that represents the right to receive cashflow at the most subordinated level of the waterfall. To the extent that on any payment date all ABS notes have received all principal and interest payments due to them, all of the issuing entity's fees and expenses (e.g., servicer fees) have been paid in full and all of the securitization's credit enhancement is at the levels that are specified in the operative agreements, the subordinated residual interest typically receives any excess payments generated by the asset pool.

The Vehicle ABS Sponsors strongly believe that retention of this subordinated residual interest is highly effective in aligning incentives between securitizers and investors and that allowing retention of such interests should be a permissible form of horizontal risk retention for Vehicle ABS[15]. However, the subordinated residual interests that we typically retain do not satisfy the definition of "eligible horizontal residual interest" that is set forth in the Proposal. The Vehicle ABS Sponsors believe that the final rules should allow risk retention by this time-tested means and therefore request that the definition be modified so that it could be satisfied by retention of a subordinated residual interest in a Vehicle ABS transaction.

The historical performance of Vehicle ABS illustrates that retention of a subordinated residual interest in its present form provides an appropriate alignment of interests between securitizers and investors. If the proposed revisions are not made, virtually all Vehicle ABS programs would need to be significantly restructured in order to take advantage of horizontal risk retention. Requiring restructuring of Vehicle ABS transactions as a cost of horizontal risk retention would only hinder the issuance of Vehicle ABS and negatively impact the availability of credit to consumers and businesses. One Vehicle ABS Sponsor that issues publicly and privately in all three Vehicle ABS asset classes estimates that the expense to hire external counsel to redraft program documents, registration statements and disclosures to restructure their programs, together with the extensive securitization systems reprogramming and testing that would be required to implement these new structures, which would be both costly (although difficult to estimate without understanding the nature of the changes) and time consuming, would cost them millions of dollars. Changes in structure would also necessitate reanalysis of legal opinion and rating agency methodologies, accounting treatment and disclosures as well as investor analysis. This is all on top of the reprioritization of the sponsor's internal personnel away from other projects. This illustrates why certain Vehicle ABS Sponsors would have to consider additionally retaining a "vertical slice" to satisfy the statutory risk retention requirements, despite the fact that this is a very expensive method of risk retention.[16]

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[15] As described in greater detail in Section I.A.3., below, certain Vehicle ABS Sponsors additionally retain the most subordinated class or classes of ABS notes issued in a securitization. This retention provides further exposure to the securitization and the Vehicle ABS Sponsors believe that any such retained junior ABS notes should be a permissible component of horizontal risk retention.

[16] In connection with an analysis of the risk retention proposals that were set forth in the Securities and Exchange Commission's Proposed Rules for Asset-Backed Securities (Release Nos. 33-9117; 34-61858; File No. S7-08-10) (the "Reg AB II Proposal"), one Vehicle ABS Sponsor undertook an internal study to determine the "cost penalty" of holding a "vertical slice" in addition to the subordinated residual interest and found that this dual holding could both compromise credit availability and hurt manufacturers who own auto financing captives. As an update to a comment letter that the Vehicle ABS Sponsors submitted in August 2010 on the Reg AB II Proposal, this sponsor

In addition, the restructured securitizations would have far more complex collection and reporting procedures and cashflow allocation mechanics than today's securitizations. This added complexity would make these traditionally sound securitization structures more difficult for us to establish and maintain and more difficult for investors to model and understand. This would also reduce comparability between historical and newer transactions, which would be reflected, for instance, in the need for rating agencies to adjust their rating methodologies to account for these modified structures.

It is important to point out that the eligible horizontal residual interest is also the risk retention method of choice for Vehicle ABS Sponsors who issue floorplan ABS. Although the issuing entities for floorplan ABS are revolving asset master trusts, most floorplan securitization transactions do not require a minimum seller's interest. Floorplan ABS transactions already require very substantial residual interests (generally ranging from about 10% to 15% of the pool balance for ABS notes with a rating in the "BBB" category), and these residual interests are uniformly held by depositors. Imposition of an additional 5% seller's interest requirement would create a significant hardship on Vehicle ABS Sponsors, and it would be unnecessary incremental enhancement.

As noted in the "Administrative Law Matters—Commission Economic Analysis" section of the Proposed Rules, retaining exposure to a securitization by means of an eligible horizontal residual interest "exposes a sponsor to the first 5 percent of all pool-asset losses and thus results in the sponsor retaining substantially more than five percent of the credit risk in a securitization. That is, a sponsor will be exposed to 100 percent of all losses as long as those losses are up to 5 percent." (Proposed Rules at 24151). Nonetheless, the Vehicle ABS Sponsors are not requesting that the amount of a subordinated residual interest they hold be determined by reference to the expected losses on their asset pools, even though such an approach would be appropriate to ensure that they only retain 5% of the credit risk of the asset pool, as they would if they were to hold a "vertical slice" of a securitization.[17] We do believe, though, that because most Vehicle ABS Sponsors will retain a horizontal exposure to their Vehicle ABS that results in the retention of significantly more than 5% of the credit risk on their securitized pools, it is appropriate to refine the Proposed Rules to ensure that properly sized residual interests of the type commonly held today are an eligible form of risk retention.

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has indicated that as of June 30, 2011 it had approximately $32 billion of public and private Vehicle ABS outstanding that would be subject to the risk retention requirements and that it has retained a subordinated residual interest in all of those securitizations. The sponsor had recently issued term debt at 5.9% and public ABS at 1.0%, so the interest rate penalty that it would have incurred by holding the "vertical slice" would have equaled at least the 4.9% differential between the two. If the subordinated residual interests that it retained did not qualify as eligible horizontal residual interests and it were also required to hold a 5% "vertical slice" for these securitizations, the cost to hold the notes would be at least $78 million per annum ($32 billion times 5% retention times the minimum 4.9% increase in its costs). That Vehicle ABS Sponsor noted that the lifeblood of competitiveness in the automotive industry is new products and that a new vehicle program could be expected to cost about $400 million, representing about 2,500 jobs. Over a five to six year period the incremental cost of "vertical slice" risk retention would therefore eliminate its ability to undertake such a program.

[17] We note by way of example that prime retail loan pools typically experience between 1.0% and 2.5% of losses over the life of the related ABS. Therefore, for this substantial portion of the marketplace, retaining an eligible horizontal residual interest that is at least 5% of the ABS interests for the securitization would normally result in the sponsor absorbing 100% of the actual pool losses.

There are a number of important revisions that will need to be made to the Proposed Rules on horizontal risk retention to render them usable for Vehicle ABS:

1. Loss Allocation for Retail Loan and Lease Securitizations: As proposed, clause (1) of the "eligible horizontal residual interest" definition envisions securitizations where principal losses on the asset pool are explicitly allocated each period to the most subordinated ABS interest(s) to reduce the par value of those ABS interest(s). While this feature is commonplace in RMBS transactions and in many floorplan ABS transactions, retail loan and lease ABS transactions do not have "loss allocation" mechanisms. The vast majority of retail loan and lease securitizations instead treat all collections each period as a single pool of distributable cash, subject to a single waterfall from which note interest, note principal, swap payments, service-provider fees, credit enhancement funding and other securitization expenses are paid. To the extent that there are losses, those losses simply reduce collections to be distributed, which may result in non-payment of certain waterfall priorities but do not result in a "write-down" of any ABS interests.

While a subordinated residual interest in a retail loan or lease securitization is not explicitly allocated losses, by virtue of its placement at the last position in the waterfall, it is implicitly the first ABS interest to have its distributions reduced or eliminated in a particular period if there are losses on the asset pool or other cashflow disruptions. For example, if on a particular payment date $80 was required to pay securitization fees, interest and principal on the ABS notes and $100 was collected on the pool during the related collection period, then $20 would be distributed to the subordinated residual interest that month.[18] If only $80 was collected due to higher losses, delinquencies or any other reason, then the subordinated residual interest would receive no payments that month but the fees and the more senior ABS notes would still be paid in full. To the extent that the $20 shortfall is a loss and is never collected, the subordinated residual interest will never be paid that amount and so would have served its function; if all or a portion of it is collected on a future date, the subordinated residual interest will again only receive a distribution if sufficient amounts are then available through the waterfall to fund all more senior payments in the month the amounts are collected. Finally, if only $75 was collected, then not only would the subordinated residual interest receive no payments that month but, assuming there was no other source to fund payments (such as a reserve account), ABS investors or securitization service providers who were entitled to payment at the most subordinate level(s) would also be underpaid that month (by $5). In this final case, however, retail loan and lease securitization structures provide that the investors or service providers who were underpaid $5 in the shortfall period would receive those amounts in full in the next period that excess amounts are available, and the subordinated residual interest would not receive any payments until those senior priorities were paid that shortfall plus any current amounts due.

[18] These examples are also illustrative for revolving asset master trust securitizations of floorplan loans where the sponsor or its affiliate maintains a residual interest that is subordinated to the ABS interests of a particular series issued by the master trust. In that case, the $100 in the example represents the portion of collections on the entire pool that is allocated to that series and the $80 represents the amounts due to the holders of senior ABS notes or service providers of that particular series. The subordinated residual interest is, therefore, the ABS interest that is entitled to any remaining amounts allocated to that series.

So, while the subordinated residual interests in retail loan and lease ABS transactions do not have a "par value" that is expressly reduced or "written down" and do not expressly allocate principal losses, the transactions nonetheless ensure that the subordinated residual interests are in the first-loss position. ***Clause (1) of the definition of "eligible horizontal residual interest" should therefore be modified so that it applies only to securitizations that have a loss allocation feature.***[19] If a securitization lacks an explicit loss allocation feature, then, as discussed in Section I.A.3., below, clause (2) of the "eligible horizontal residual interest" definition adequately ensures that the horizontal risk retention is being achieved by the depositor holding the first-loss, most subordinated ABS interests.

2. Loss Allocation for Floorplan Securitizations: As mentioned above, an allocation of principal losses does occur in revolving asset master trust securitizations used to finance floorplan loans. However, there are two problems with the application to floorplan ABS of the loss allocation provision in clause (1) of "eligible horizontal residual interest" as currently drafted. First, a master trust issues multiple series of ABS notes, and losses are allocated to each of those series. Each series' share of losses is then allocated to the most subordinated ABS interest in that series until that ABS interest is reduced to zero. Second, a master trust also issues a seller's interest, and a portion of the losses is allocated to that seller's interest. So it is not the case that there is one horizontal residual interest to which all losses will be allocated. Rather, there is one for each series, and that interest is allocated just those losses that have first been allocated to its series. ***To address this problem, clause (1) should also be modified to state that for revolving asset master trust securitizations, the eligible horizontal residual interest must be the first ABS interest to be allocated losses from that series' allocated portion of losses on the pool of securitized assets.***

3. Subordinated Payments for Retail Loan and Lease Securitizations: As proposed, clause (2) of "eligible horizontal residual interest" requires that the interest have "the most subordinated claim to payments of both principal and interest by the issuing entity." As described above, the subordinated residual interests presently retained by sponsors in the vast majority of retail loan and lease ABS transactions do not receive any payments on a payment date unless all ABS notes, all transaction fees, all swap payments and all credit enhancement have been paid in full. However, there are also retail loan and lease ABS transactions where the depositor retains all or a portion of the next-most junior ABS interest as well. For example, rather than creating three tranches of ABS interests, two senior classes of ABS notes that are sold to investors plus a relatively "thick" subordinated residual interest that the depositor retains, the sponsor might split the residual interest and issue four ABS interests: the same two classes of senior ABS notes (that are again sold to investors) a new, subordinated class of ABS notes that is retained by the depositor and the remaining, now smaller, subordinated residual interest that is also retained by the depositor.[20]

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[19] All of our suggested modifications to the text of the Proposed Rules are consolidated in Annex A.

[20] A sponsor may elect to use this formulation so that it has a readily marketable ABS interest to sell should a market later develop for it.

For so long as a sponsor retains each of these subordinated ABS interests, the "eligible horizontal residual interest" should be comprised of both the subordinated residual interest (which is entitled to no payments until all transaction fees and expenses and ABS notes are paid on a given payment date) and the retained junior ABS notes. We also believe that counting retained junior ABS notes is appropriate since the ratings on the senior ABS notes will ensure that they are protected notwithstanding the interest rate on the retained junior ABS notes, even if such rates are above-market, since the rating methodology will require that additional assets be available to support the timely payment of interest and ultimate payment of principal on the senior ABS notes. Furthermore, it is unlikely that a sponsor would be willing to commit additional assets to a transaction to support above-market interest rates on a retained junior ABS note since this will result in the transaction being less efficient.

We also wish to point out an ambiguity in the drafting of the subordination requirement and ask for a clarification. Clause (2) requires that an eligible horizontal residual interest must have the "most subordinated claim to payments of both principal and interest." We interpret this to mean that the interest payments on an eligible horizontal residual interest must be subordinated to interest payments on all other ABS interests, and that principal payments to an eligible horizontal residual interest must be subordinated to principal payments on all other ABS interests. But we think it does not mean that interest payments on an eligible horizontal interest must be subordinated to principal payments on all other ABS interests. This distinction is an important one to us because in floorplan securitizations with separate principal and interest waterfalls, the subordinated residual interest receives its payment at the last level of each waterfall and this manner of subordination should be permissible for a subordinated residual interest that is to qualify as an eligible horizontal residual interest. Also, a subordinated ABS note that would otherwise qualify as an eligible horizontal residual interest will typically have interest payments that are senior to principal payments on other ABS notes. The interest payments on the subordinated ABS note will be junior to interest payments on all other ABS notes, and the principal payments on the subordinated ABS note will be junior to principal payments on all other ABS notes and these retained notes should qualify as a component of an eligible horizontal residual interest.

Our suggested revisions to clause (2) to correct these issues are set forth at the conclusion of Section I.A.5.

4. Subordinated Payments for Master Trust Securitizations: An additional issue arises in trying to apply the subordinated payments requirement of clause (2) to ABS interests issued by master trusts.[21] Because master trusts issue ABS notes and subordinated residual interests, allocate principal collections, and make principal payments, on a series-by-series basis, the payments in respect of an eligible horizontal residual interest that is part of a particular series will be made only out of the interest and principal

[21] In the Vehicle ABS marketplace, master trusts are most commonly utilized for floorplan loan securitizations but may also be used for fixed pools of amortizing retail loan or retail lease assets. This latter structure is common in Canadian securitizations, for instance, which is a concern for those of us that sponsor securitizations in Canada and offer certain of those ABS notes in domestic Rule 144A offerings.

collections allocated to that series. Those payments have nothing to do with payments on any other series, and therefore cannot be said to be subordinated to the ABS notes in any other series.

Our suggested revisions to clause (2) to correct these issues is set forth at the conclusion of Section I.A.5.

5. Subordinated Payments for Securitizations Featuring an Initial Revolving Period: Many securitizations also feature a revolving period during which no principal payments are made on the related ABS. In the case of Vehicle ABS this is most commonly the case for floorplan ABS, which are backed by the floorplan receivables that arise under the revolving accounts held by the master trust on a continual basis and where a separate receivable is generally created for each vehicle that is financed. This also may be the case in retail loan or retail lease securitizations, which are not backed by revolving assets but for which a sponsor may nonetheless determine that it is more efficient to delay the amortization period for the ABS. Until the amortization period[22] begins for the related series or securitization, the principal collections that are collected on the securitization's asset pool or, in the case of a master trust, are collected on the master trust's asset pool and that are allocated to that series, are generally distributed back to the holder of the subordinated residual interest, effectively in "payment" for the new assets that it sells to the issuing entity during the revolving period. Once the related amortization period begins, principal collections will be paid to the holders of ABS notes in their required amounts prior to any distribution of remaining principal collections to the holders of a subordinated residual interest.[23]

To address the points made in sections 3, 4 and 5 with respect to clause (2), the Vehicle ABS Sponsors suggest that the following changes be made:

- *The introductory clause of the definition "eligible horizontal residual interest" should be modified to refer to "an ABS interest or ABS interests."*

- *Clause (2) should be modified to read "(2) satisfies one of the following conditions: (a) has the most subordinated claim to payments of principal of all ABS interests that are entitled to receive principal payments on each payment date after the commencement of the amortization period and has the most subordinated claim to payments of interest of all ABS interests that are entitled to receive interest payments on each payment date, (b) if it is an ABS interest issued by a revolving asset master*

[22] In many securitizations featuring revolving periods, the initial revolving period is followed first by an "accumulation period," when principal collections that would have been distributed on the subordinated residual interest during the revolving period are instead held in reserve for payment on the ABS notes, and then by an "amortization period," when those reserved amounts and other collections are actually paid on the ABS notes to amortize them. Because no amortization of the ABS notes actually occurs until the amortization period commences, it is appropriate to track distributions of principal on the ABS notes for such securitizations only after the commencement of the amortization period, rather than from the closing date or from the end of the revolving period.

[23] On the other hand, the subordination of interest payments applies at all times.

trust, (i) at all times has the most subordinated claim to payments of interest of all ABS interests in its series that are entitled to receive interest payments on each payment date and (ii) following the commencement of the amortization period for its series, has the most subordinated claim to payments of principal of all ABS interests in its series that are entitled to receive principal payments on each payment date, or (c) is entitled to payments on each payment date only after all other ABS interests have been paid all principal and interest due on that payment date."

6. Principal Payments: The third criteria in the definition of "eligible horizontal residual interest" provides that the ABS interest is not permitted to receive any principal payments other than a proportionate share of scheduled principal payments collected on the pool. As described above, this feature is inconsistent with the way both subordinated residual interests and retained junior bonds currently receive distributions in Vehicle ABS and is an unnecessary, inappropriate and uneconomical restriction on those securitizations.

In Vehicle ABS the subordinated residual interest may receive distributions on the pool assets in any period, so long as the senior ABS interests have all received their required periodic principal and interest payments, all issuing entity fees and expenses have been paid and all credit enhancement that is funded or maintained with cashflow from the pool assets is at its then-required level. If other junior ABS interests are held as a portion of the "eligible horizontal residual interest," they will receive interest only if all senior ABS interests have been paid 100% of the interest they are then due and will receive principal only if all senior ABS interests have received 100% of the principal they are then due. Preventing these ordinary course payments on the "eligible horizontal residual interest" components when a securitization is fully performing would not serve any purpose other than to cause the sponsor to retain more credit enhancement within the securitization than the sponsor, investors, underwriters and rating agencies had previously determined was needed to protect investors against a multiple of expected losses, and all at a time when, rather than experiencing losses or a diminution in credit enhancement, the securitization was making all required payments and generating excess collections.

Furthermore, other than in floorplan securitizations, Vehicle ABS collections are rarely segregated into principal and interest collections and applied in separate waterfalls, as is often the case in RMBS and certain other asset classes, and in no Vehicle ABS transactions are principal collections ever segregated into "scheduled" and "unscheduled" collection pools and waterfalls. Therefore, preventing excess payments on the subordinated residual interest other than from "scheduled payments of principal" on the securitized assets would require that Vehicle ABS that presently allocate all collections from a single collections pool (or, in the case of many floorplan securitizations, a pool of interest collections and a single pool of principal collections) instead begin separately tracking and accounting for (1) interest collections and distributions, (2) "scheduled" principal collections and distributions and (3) "unscheduled" principal collections and distributions. This would be wholly inconsistent with reporting and cash application for any Vehicle ABS that is in the market today. This would also introduce unnecessary complexity into an asset class that has always performed and where sponsors and investors have traditionally relied on remarkably straightforward collection and allocation procedures.

Further, the concept of "scheduled" principal payments is problematic to varying degrees in all three Vehicle ABS asset classes. For retail leases, "principal" is a meaningless concept; the lessee owes a series of monthly payments which constitute rent, not principal or interest, and the proceeds from the sale of the leased vehicle at the end of the lease term could not properly be categorized as principal or interest. Floorplan loans are "due on sale," meaning that the dealer must remit the principal balance when the dealer sells the vehicle; there is no "scheduled" payment date. Finally, most retail loans are simple interest loans, with the result that the portion of each monthly payment that constitutes the principal portion varies somewhat according to the day on which the payment, or any prepayment on the retail loan, is received.

For securitizations where the transaction documents do not have separate allocation methods for interest, "scheduled" principal and "unscheduled" principal collections, the rule should instead provide that distributions on the eligible horizontal residual interests are permitted on any payment date so long as an "allocable share"[24] of the amount by which the securitization's asset balance has declined since the closing date has been used to pay down the more senior ABS interests. While these securitizations may not expressly provide that principal collections (as opposed to collections generally) must be allocated in a particular manner that gives preference to the senior ABS interests, if those investor-held securities have been paid down with any type of collections by at least their allocable percentage of the decrease in the asset balance then the rule will achieve the same result. For securitizations that include a revolving feature (including revolving asset master trusts) and where amounts that would otherwise have been distributed to the investors as principal on their ABS notes are instead distributed to the holder of the residual interest in consideration of its transfer of additional assets to the issuing entity or held in reserve for the benefit of the noteholders until the amortization period begins, the modified rule we suggest below would utilize this testing mechanism only once the amortization period had commenced and the notes have begun to amortize.

We understand the intent of the proposed rule is to restrict the ability to artificially reduce the amount of risk retained over time. Therefore, after the amount of retained risk is initially calculated at the start of a deal, we propose a monthly test that ensures the risk retention is not reduced on an accelerated basis due to distributions on the residual interest. The test is based on the decline in trust liabilities as compared to the decline in trust assets. This test does not alter any of the ABS transaction mechanics, including sequential payment of ABS notes, the build of credit enhancement over time through targeted overcollateralization requirements, waterfall priorities of payment, and priority principal payments. It is simply meant to determine whether any residual cash flows can be released back to the holder of the residual interest. It also does not guarantee that the

[24] For securitizations not effected using revolving asset master trusts, we believe "allocable share" of the senior ABS interests should be defined as the outstanding principal balance of the senior ABS interests on the closing date divided by the sum of the pool balance and any reserve account balance. For securitizations effected using revolving asset master trusts, we believe the "allocable share" of the senior ABS interests in a series should be defined as the outstanding principal balance of the senior ABS interests of that series divided by the sum of that series' share of the pool balance and any reserve account balance for that series, each as of the first day of that series' amortization period.

holder of the residual interest will receive a pro rata share of distributions since the residual interest will bear losses first and continue to be paid only at the bottom of the waterfall.

Amortizing Securitizations. We propose that, for securitizations other than those featuring revolving periods, as of each payment date, the servicer would calculate the cumulative decrease in the sum of the pool balance plus any reserve account balance that has occurred since closing (i.e., the decrease in the securitization's pool balance) and determine whether the aggregate principal balance of the senior ABS interests (i.e., the issuing entity's liabilities, other than those constituting the eligible horizontal residual interest) had been reduced by at least their allocable share of that decrease since closing. If the test is satisfied then there would be no limitation on payments on the eligible horizontal residual interest on that payment date; if the test is not satisfied, then the eligible horizontal residual interest would not be entitled to payments until a future payment date when the senior ABS interests have received their full allocable share of the cumulative decrease in the securitization's asset balance from the closing date to that future date.

For example, assume that the ABS interests other than the eligible horizontal residual interest have an initial value equal to 93% of the sum of the initial pool balance plus the initial reserve account balance. If the pool balance was initially $98,000,000 but decreased to $88,000,000 as of the tenth payment date[25] and if a reserve account had a balance of $2,000,000 both at closing and on that payment date, then the relevant test would be whether at least $9,300,000 had been used to pay down the senior ABS interests as of that payment date ($9,300,000 = 93% allocable to senior ABS interests * $10,000,000, which represents the decrease from the initial securitization asset balance of $98,000,000 + $2,000,000 = $100,000,000 to the subsequent securitization asset balance of $88,000,000 + $2,000,000 = $90,000,000). If that test is passed then the eligible horizontal residual interest would be allowed to receive any distributions that otherwise would be paid to it through the waterfall.

It should be noted that this test is performed using cumulative numbers, so the actual percentage of the decrease in the securitization's asset balance that is allocated to principal payments on the senior ABS interests on any particular payment date does not matter. This cumulative calculation is crucial because the rate at which senior ABS interests are paid principal often varies during different phases of a securitization. For instance, all excess cashflow may be allocated to paying down the most senior outstanding notes at the outset of the transaction to increase the amount of overcollateralization, but then once a predetermined level of overcollateralization is achieved excess cashflow may not otherwise be needed and would be available to pay the

[25] Note that the pool balance may decrease because principal is collected on the pool assets or because losses are realized on the pool assets. Securitizations typically allocate cash to ABS notes in order to maintain a predetermined ratio between the pool balance and the outstanding principal balance of one or more ABS notes. Therefore, we recognize that it is necessary to confirm that the senior ABS notes have been paid principal in an amount equal to their allocable share of the total decrease in the securitization's asset balance and are not suggesting a calculation that merely tracks the decrease in the senior ABS notes against some portion of actual collections on the pool assets.

eligible horizontal residual interest. This is appropriate because the residual interest has received less than its proportionate share in prior periods. Using the figures from the previous example, if an incremental $1,000,000 pool balance decrease occurred in month 11, the relevant test would not be whether the aggregate principal balance of the senior ABS interests decreased by at least $930,000 that month ($930,000 = 93% * $1,000,000 incremental decrease in the securitization's asset balance from month 10 to month 11). Instead, the test would be whether their aggregate principal balance had decreased since closing by at least $10,230,000 ($10,230,000 = 93% * $11,000,000 cumulative decrease in the securitization's asset balance from closing through month 11).

Securitizations Featuring Revolving Periods. For securitizations effected using revolving asset master trusts or that otherwise feature a revolving period that commences on the closing date, we propose that as of each payment date following the commencement of the amortization period for the ABS interests of a series, the senior ABS interests should receive principal payments (or deposits for the purpose of eventual payment of principal) at least equal to their allocable share of the aggregate principal collections and losses allocated to such series. If the test is satisfied, then there would be no limitation on payments on the eligible horizontal residual interest on that payment date; if the test is not satisfied, then the eligible horizontal residual interest would not be entitled to payments until a future payment date when the senior ABS interests had received their full allocable share of such principal collections and losses from the end of the revolving period to that future date.

To give effect to these provisions, ***clause (3) of the "eligible horizontal residual interest" definition should be modified to read "(3) Until all other ABS interests in the issuing entity are paid in full, satisfies one or more of the following conditions: (a) is not entitled to receive any payments of principal made on a securitized asset, provided, however, an eligible horizontal residual interest may receive its current proportionate share of scheduled payments of principal received on the securitized assets in accordance with the transaction documents, (b) if the transaction documents do not provide for the separate collection and distribution of interest, scheduled payments of principal and unscheduled payments of principal on the securitized assets, is not entitled to receive payments unless the aggregate percentage decrease in the outstanding principal balance or securitization value, as applicable, of all related ABS interests that do not comprise the eligible horizontal residual interest since the closing date is at least equal to the percentage equivalent of the aggregate decrease in the principal balance or securitization value, as applicable, of the securitized assets plus the aggregate decrease (if any) in the amount on deposit in any reserve accounts since the closing date divided by the sum of the principal balance or securitization value, as applicable, of the securitized assets as of the cutoff date plus the amount on deposit in any reserve accounts on the closing date) (c) if the transaction documents feature a revolving period that commences on the closing date but the ABS interest is not issued by a revolving asset master trust and if the transaction documents also do not provide for the separate collection and distribution of interest, scheduled payments of principal and unscheduled payments of principal on the securitized assets, is not entitled to receive payments unless the aggregate percentage decrease in the outstanding principal balance or securitization value, as applicable, of all related ABS interests that do not***

comprise the eligible horizontal residual interest since the first day of the amortization period is at least equal to the percentage equivalent of the aggregate decrease in the principal balance or securitization value, as applicable, of the securitized assets plus the aggregate decrease (if any) in the amount on deposit in any reserve accounts since the first day of the amortization period divided by the sum of the principal balance or securitization value, as applicable, of the securitized assets as of the first day of the amortization period plus the amount on deposit in any reserve accounts on the first day of the amortization period); or (d) if it is an ABS interest issued by a revolving asset master trust, is not entitled to receive payments of principal collections allocated to such series after the commencement of the amortization period for that series unless all related ABS interests that do not comprise the eligible horizontal residual interest have received at least their allocable share of all principal collections and losses allocated to such series since the first day of the amortization period. For securitizations effected using revolving asset master trusts, the "allocable share" for the ABS interests of a series that do not comprise the eligible horizontal residual interest is the sum of the sum of the outstanding principal balance of each of those ABS interests divided by the sum of that series' share of the pool balance and the reserve account balance for that series, each as of the first day of that series' amortization period."

B. Horizontal Risk Retention: Valuing the Retained Interest's "Par Value"

The subordinated residual interests that are typically structured in Vehicle ABS transactions (and that the Vehicle ABS Sponsors believe should qualify for horizontal risk retention purposes) have neither stated principal amounts nor calculated par values.[26] The Vehicle ABS Sponsors interpret the Proposed Rules to allow calculation of the "par value" of these residual ABS interests according to any reasonable methodology, so long as the material features of the methodology and the results of the calculation are disclosed to investors in accordance with subsection (c)(3) of the Horizontal Risk Retention section. ***We request that this interpretation be confirmed in the final release.***

There are two calculation methodologies that the Vehicle ABS Sponsors expect will often be used to value eligible horizontal residual interests in their securitizations. We further request that these two methodologies be acknowledged as permissible, but non-exclusive, valuation methods for eligible horizontal residual interests in Vehicle ABS.

1. Discounted Cashflows Approach: The Vehicle ABS Sponsors interpret the references in part (c)(3) of the Horizontal Risk Retention section to "estimated cash flows and the discount rate used" to calculate the values of ABS interests to imply that an eligible horizontal residual interest could be valued by determining the discounted present value

[26] To the extent that one or more components of the eligible horizontal residual interest did have a stated principal amount (e.g., if the most subordinated tranche of ABS interests other than the residual interest were retained by the sponsor in addition to the residual interest) then presumably the then-outstanding principal amount of that component would be included as a component of the retained horizontal interest's value on any date of determination.

of future cashflows on the related ABS interests.[27] In this case, components such as the current amount of overcollateralization and the discounted present value of any expected excess interest to be received on the residual interest would be included in the calculated value. So long as a Vehicle ABS Sponsor discloses the components that it used to calculate the residual interest's value, the rate at which it discounted amounts expected to be received on the residual interest on future dates, the pool prepayment and loss assumptions that were utilized and similar characteristics and other material assumptions that were used to calculate the value, determining an eligible horizontal residual interest's value in this manner should be permissible. We point out that in virtually every retail loan securitization, excess spread has been more than sufficient to absorb all losses on the securitized assets[28] and, therefore, excess spread should be fully considered in the discounted cash flow calculation. This is especially true when compared to a vertical slice retained by a sponsor which would share losses with investors and only absorb 5% of losses. ***We request that the final release state that calculating the value of a horizontal residual interest using a "discounted cashflows" approach is permissible.***

2. Balance Sheet Approach: Because the Proposal does not indicate whether an eligible horizontal residual interest must be valued using the discounted cashflows methodology, it appears that it would also be permissible for a Vehicle ABS Sponsor to value a residual interest as the difference between an issuing entity's assets (e.g., the value of the securitized assets and amounts on deposit in reserve accounts) and its liabilities (i.e., the par value of all other ABS interests). If this is permitted, it would be appropriate in certain cases for Vehicle ABS Sponsors to value certain securitized assets other than at their stated value. For example, as described above under "Background on Vehicle ABS Structures – Retail Lease Securitizations," in automobile lease securitizations a calculated "securitization value" (or similarly defined term) is used for each lease. As with a discounted cashflow approach, so long as a sponsor fully discloses the manner in which it valued the issuing entity's assets and liabilities for purposes of determining the residual interest's value, including any prepayment and loss assumptions, asset valuation methodologies, and similar characteristics, this should be a permissible manner of calculation. ***We request that the final release state that calculating the value of an eligible horizontal residual interest using a "balance sheet" approach is permissible.***

C. Reserve Accounts

As described throughout Section I.A and I.B, above, cash in a securitization's reserve account that is available to fund shortfalls in payments on the ABS interests is often an integral component of the subordinated residual interests that are typically structured in Vehicle ABS transactions and that the Vehicle ABS Sponsors expect to be able to hold as eligible horizontal residual interests. However, Section __.5(b) of the Proposed Rules provides that a horizontal

[27] The Vehicle ABS Sponsors also note that this methodology is consistent with the presentation entitled "Federal Reserve Bank of New York: Understanding Premium Capture" (Adam B.Ashcraft, 7 April 2011), which references the use of a discounted cashflows approach to value an eligible horizontal residual interest.

[28] See Chart 1 of "Not All Risk Retention Options are Created Equal for US Nonrevolving Consumer ABS:, May 3, 2011. http://www.americansecuritization.com/uploadedFiles/SP Risk Retention 5-3-2011.pdf

cash reserve account may satisfy the horizontal risk retention requirements "in lieu of" an eligible horizontal residual interest, rather than as a component thereof. ***We request, therefore, that the opening statement to Section __.5(b) be revised to read "Amounts that are on deposit in a reserve account may be included in the sponsor's valuation of any eligible horizontal residual interest; provided that the account meets all of the following conditions***:".

Furthermore, in order to ensure that the reserve accounts that are currently maintained in Vehicle ABS transactions are permissible forms of risk retention, there are four additional revisions that should be made.

1. Master Trusts: The language in Section __.5(b) does not contemplate a reserve account that is established to support a single series issued by a master trust. For example, the Vehicle ABS Sponsors' floorplan securitizations commonly feature reserve accounts that are available only to fund shortfalls in a particular series of ABS interests issued by the master trust. ***The modified language we have set forth in Annex A regarding reserve accounts permits sponsors to count reserve accounts that are established in connection with the issuance of a particular series from a master trust as risk retention for that series.***

2. Investments: Section __.5(b)(2) provides a very limited number of permitted investments for funds in reserve accounts. Additionally, Section __.5(b)(2) would allow the investment of reserve account funds in longer-term investments, which is currently not permitted in Vehicle ABS transactions where monthly payment dates are the norm and a longer-term investment would expose the securitization to the risk of loss on the investment if an earlier liquidation was needed so that the funds could be used to make required payments. In all Vehicle ABS transactions that the Vehicle ABS Sponsors are aware of, amounts in a reserve account may be invested in similar short-term, highly rated investments to amounts on deposit in the collection account and other trust accounts. Furthermore, reserve account deposits may need to be invested in a specified currency, depending on the currency in which the ABS interests or the pool assets are payable. ***The Vehicle ABS Sponsors request that amounts in a reserve account should be allowed to be invested according to investment criteria that are at least as stringent as those for all other trust accounts in the securitization.***

3. Use of Funds: Amounts on deposit in reserve accounts typically are not available to fund shortfalls in all payments on the ABS interests and are also typically available to fund shortfalls in certain other amounts owed by the issuing entity. For example, in retail loan securitizations amounts in the reserve fund are available to fund shortfalls in interest payments owed on the ABS notes, certain principal payments owed on the ABS notes (e.g., principal payments that are required to ensure that the aggregate note balance does not exceed the pool balance and principal payments on an ABS note on its legal final maturity date generally would be covered but other principal payments would not be) and the most senior fees payable out of the waterfall (e.g., senior trustee or servicer fees). Section __.5(b)(3)(i) is therefore over-inclusive when it provides that "[a]mounts in the account shall be released to satisfy payments on ABS interests in the issuing entity. . .to satisfy an amount due on any ABS interest" because there may be certain amounts—such as certain principal payments—that would be paid on the ABS interests through the

waterfall if sufficient funds were available but that are typically not paid with funds withdrawn from the reserve account. It is also under-inclusive in that it would appear to forbid the use of reserve account funds to pay senior fees and expenses of the issuing entity, which is commonplace for Vehicle ABS. ***The Vehicle ABS Sponsors request that Section __.5(b)(3)(i) be modified so that amounts in a reserve account must be available to fund any payments on the ABS interests which, if they were not paid on the related payment date or within a specified grace period, would cause an event of default. Additionally, other payments using reserve account funds (e.g., senior fees and payments on the ABS interests which would not cause an event of default if they went unpaid) that are allowed under the related transaction documents should not be prohibited.***

4. Releases to the Sponsor: The Vehicle ABS Sponsors appreciate that the Proposed Rules acknowledge that in many securitizations investment returns on reserve account deposits are released to a sponsor. However, we do not believe that the additional provisions regarding releases from a reserve account are necessary. As described further below, we believe that Section __.14, relating to hedging and transfer limitations, already prevents releases from a reserve account maintained to satisfy risk retention requirements (other than to fund required shortfalls on the Vehicle ABS) that would cause its value to decrease below the mandated levels. ***The Vehicle ABS Sponsors therefore request that the provisions set forth in Section __.5(b)(3)(ii)(A) be deleted.***

D. Representative Sample

A sponsor of Vehicle ABS selects the pools to collateralize its Vehicle ABS from the portion of its portfolio that meets the prescribed securitization pool criteria, with no adverse selection permitted. The other receivables that remain unsecuritized after a pool is selected typically were originated using substantially the same underwriting criteria as the securitized receivables and then remain unsecuritized, at least temporarily, and are financed wholly by the Vehicle ABS Sponsor. Furthermore, many Vehicle ABS Sponsors maintain a significant portfolio of unsecuritized receivables at all times. For these reasons, the Vehicle ABS Sponsors appreciate the option to meet their risk retention requirements by holding a representative sample of receivables (an "Unsecuritized Pool"). However, the proposed Unsecuritized Pool rules are unnecessarily complex and burdensome and, therefore in their present form, would not be utilized in the Vehicle ABS markets.

Achieving the goal of aligning a sponsor's exposure with its investors' could be achieved through much less burdensome methods than those included in the Proposal. Rather than mandating the manner in which the Unsecuritized Pool is constructed, the Proposed Rules instead should only require that the Unsecuritized Pool be selected at the same time that the securitization's asset pool is selected from the same pool of assets, utilize the same selection criteria and allow no adverse selection. The Proposed Rules are inconsistent with random selection techniques. The Proposed Rules as drafted are too difficult to administer and could require multiple samplings to test whether the representative sample is equivalent in all material respects to the ABS pool. An assessment at the time that the respective pools are selected that they represent "equivalent risks" is also appropriate, but there must be a specified list of criteria for which this test should be performed, rather than demanding equivalence for "each material

characteristic" whether "quantitative" or "categorical." The Vehicle ABS Sponsors propose that the material characteristics to be compared are FICO score, outstanding principal balance and remaining term.

Requiring that a sponsor identify an Unsecuritized Pool based on these revised criteria, perform the testing described above, maintain the assets unsecuritized for the life of the related ABS transaction and service them in the same manner as the securitized assets are serviced are all appropriate conditions that ensure that the selection process was proper, will be respected on an ongoing basis and will expose the sponsor to a risk that is analogous to exposure to the related ABS notes.

However, the further requirements set forth in the Unsecuritized Pool proposal—demanding an agreed upon procedures report on the selection process, policies and procedures, testing and maintaining procedures at the time the ABS notes are sold and requiring monthly testing and reporting of the performance of the Unsecuritized Pool for comparison against the ABS pool—are unnecessarily costly and time consuming. These additional requirements would drive the Vehicle ABS Sponsors away from ever using this method because it would essentially require that we hold Unsecuritized Pools, unhedged and wholly at our own expense, while simultaneously assuming the most onerous ongoing costs of a securitization with respect to those assets. These requirements should be deleted from the Proposal.

In addition, the requirement that the "individuals responsible for servicing the assets" in the Unsecuritized Pool and the ABS pool be unable to "determine whether an asset is owned or held by the sponsor or owned or held by the issuing entity" is unworkable. As noted above, we agree with the requirement that the assets in the Unsecuritized Pool should be serviced "under the same contractual standards" and thus with the same level of care and attention. However, as currently drafted this provision would not allow for cash flows from the receivables to be directed to the proper recipients. Cash flows for the receivables must be sent to either the sponsor or the securitization accounts for further distribution to the Vehicle ABS deal parties. At the very least, this provision must be clarified to limit its applicability to servicing personnel involved in the collection process with obligors.

E. Seller's Interest

The Vehicle ABS Sponsors are generally in favor of the proposed provisions regarding the use of the seller's interest as an appropriate form of risk retention for revolving asset master trusts. However, to accommodate the structure of the seller's interest in a typical floorplan securitization as described above, the Vehicle ABS Sponsors request that the provisions of Section __.7 regarding revolving asset master trusts and the related definitions be revised as follows.

1. General Requirement Section __.7(a)(1): Section __.7(a)(1) of the Proposed Rules requires that "the sponsor retain a seller's interest of not less than five percent of the unpaid principal balance of all assets owned or held by the issuing entity." As described above, in a typical floorplan securitization transaction it is the depositor and not the sponsor that holds the seller's interest. In most automobile floorplan master trusts it would be very difficult or impossible to restructure the seller's interest so that it could be

transferred to and held by the sponsor. In addition, revolving asset master trusts often hold assets in excess of the amount required to collateralize the outstanding investor interests and the master trust may hold assets other than floorplan receivables or interests in the floorplan receivables. In particular, the master trust may hold funds in cash collateral, reserve, collection and other accounts. Funds in these accounts are generally invested in short-term, highly rated investments. The Vehicle ABS Sponsors do not believe that it is necessary or appropriate to include these assets when calculating the required amount of risk retention. ***Therefore, the Vehicle ABS Sponsors request that in Section __.7(a) the phrase "the sponsor" be replaced with "the depositor" and the phrase "the unpaid principal balance of all assets" be replaced with the phrase "the outstanding principal balance of the investor interests."***

2. General Requirement Section __.7(a)(2): Section __.7(a)(2) as proposed requires that all of the securitized assets of the revolving asset master trust be "loans or other extensions of credit that arise under revolving accounts." As described above, the assets held by the issuing master trust may be interests in loans or extensions of credit, such as participation interests, or a certificate or other interest in a trust holding such loans or extensions of credit. In addition, some of these loans or extensions of credit may not be "accounts" as that term is commonly used. Therefore, in order to encompass the types of assets and structures commonly in place in existing automobile floorplan securitization transactions, ***the Vehicle ABS Sponsors request that Section __.7(a)(2) be revised to read as follows: "(2) All of the securitized assets are loans or other extensions of credit that arise under revolving accounts or other revolving financing arrangements, or participation or other interests therein, including a collateral certificate or similar interests in a trust or other entity that holds such assets."***

3. Section __.2 Definition of Securitized Asset: Clause (2) of the definition of securitized asset includes all assets that "[collateralize] the ABS interests issued by the issuing entity." As described above, from time to time ineligible receivables that are not eligible to collateralize the investor interest are transferred to the master trust because they arise under the applicable accounts. Although these receivables may collateralize the seller's interest, they do not collateralize the investor interests and losses on these receivables are not allocated to the investor interests. Accordingly, these assets should not be included in calculating the amount of required risk retention and should be excluded from the definition of securitized assets. ***Therefore, the Vehicle ABS Sponsors request that clause (2) of the definition of securitized assets be revised to read as follows: "(2) Collateralizes the investor interests issued by the issuing entity."***

4. Section __.2 Definition of Seller's Interest: The Vehicle ABS Sponsors have several comments to the definition of seller's interest. First, the definition requires that the seller's interest be "an ABS interest." As described above, in many automobile floorplan securitizations the seller's interest is not a single interest, but rather a group of different rights to which the holder is entitled under the transaction documents. Although there may be interests retained by the depositor that meet the proposed requirements, the definition suggests that those rights need to be part of a single interest. In many instances creating such an interest would require an amendment of the existing transactions, which may be difficult or even impossible. ***Therefore, the Vehicle ABS Sponsors request that***

the phrase "an ABS interest" in the beginning of the definition of seller's interest be replaced with "an ABS interest, ABS interests or portions thereof."

Second, clause (1) of the definition requires that such interest be "(1) In all of the assets that: (i) Are owned or held by the issuing entity; and (ii) Do not collateralize any other ABS interests issued by the issuing entity." As previously stated, the issuing entity may own an indirect interest in the securitized floorplan receivables, such as a collateral certificate, and the issuing entity may own assets in addition to the securitized assets, such as cash collateral, reserve, collection or other accounts, interest rate swaps, and other forms of credit enhancement. The seller's interest may not benefit from these assets, as some of them may be only for the benefit of the investors or other specified parties. The seller's interest should only be required to relate to the securitized assets and should exclude assets that collateralize only a specified class or series of ABS interests, such as interest rate swaps, or other enhancements. ***Therefore, the Vehicle ABS Sponsors request that Clause (1) be revised to read as follows: "(1) In the securitized assets owned or held by the issuing entity other than those that collateralize other specified ABS interests issued by the issuing entity."***

Third, Clause (2) requires that the seller's interest be "pari passu with all other ABS interests" issued by the issuing entity with respect to the allocation of "all payments and losses." As described above, it is typical for a master trust to issue multiple series of ABS notes and for each series of ABS notes to have senior and subordinate classes. Although the allocations to various series may be pari passu, the allocations within a series will not be pari passu among the various classes. In addition, the seller's interest may contain both interests that are subordinate and that are pari passu with respect to other series or classes within a series. In addition, there are times other than an early amortization period during which the seller interest may be subordinate to the investor interests, such as during a normal amortization or accumulation period. ***Therefore, the Vehicle ABS Sponsors request that Clause (2) be revised such that the seller interest be "pari passu or subordinate to all other ABS interests."***

Finally, Clause (2) requires that "all payments and losses" be allocated on a pari passu basis. As described above, a particular series or class of securities may have the benefit of interest rate swaps, reserve accounts or other forms of credit enhancement or assets that are not available to other series or classes of securities. ***The Vehicle ABS Sponsors would like to clarify that it is collections and losses on the securitized assets that must allocated on a pari passu basis, not payments on the ABS interests, and request that the phase "all payments and losses" be replaced with "all collections and losses with respect to the securitized assets."***

F. "Blended" Risk Retention

We note that the Proposed Rule allowing "L-shaped" risk retention (i.e., a combination of a vertical slice and a horizontal slice in a prescribed, 50%/50% ratio) acknowledges that it is possible to "mix and match" different forms of risk retention while still ensuring that, in the aggregate, exposures are held by the sponsor that equal at least 5% of the ABS interests issued in the securitization. There is no reason that the final rules should not allow risk retention to be

held in any combination of a retained "vertical slice," a retained "horizontal slice," an unsecuritized pool and, for revolving asset master trust securitizations of floorplan loans, a seller's interest, so long as, in the aggregate, the exposures that are held reflect an aggregate retained risk exposure of at least 5%.[29]

Allowing this type of flexibility would ensure that sponsors are not required to retain more exposure to their securitizations than the rule intended. For instance, because the Vehicle ABS Sponsors have, for decades, traditionally retained 100% of the subordinated residual interests in their securitizations, they anticipate that investors will continue to expect them to hold those interests. Additionally, many of us prefer to retain the subordinated residual interests so that we can maintain ongoing exposure to our originated assets. Regardless, even if we wished to sell, resecuritize or otherwise "cash out" these subordinated residual interests, there is not a significant market for us to do so efficiently.

If a Vehicle ABS Sponsor that is going to retain a subordinated residual interest finds that the interest is only "valued" at 4.5% of the par value of all ABS interests, then according to the Proposed Rules the Vehicle ABS Sponsor would have to choose among a menu of inefficient options to achieve its required level of risk retention. Such a sponsor could transfer additional eligible assets to the asset pool without issuing any additional ABS interests to investors. This would enhance the value of the subordinated residual interest, but only by adding assets that provide credit enhancement that is otherwise unnecessary to support the securitization's expected losses and cashflow demands. Alternatively, if the Vehicle ABS Sponsor does not have additional eligible assets to contribute, the least inefficient way for it to meet its risk retention requirements under the Proposed Rules would be to also hold a 2.5% vertical slice of the securitization, which is the minimum amount it would have to hold to satisfy the "L-shaped" risk retention requirement but results in approximately 7.0% risk retention.

A more logical solution would be to allow a sponsor to construct a similarly sized unsecuritized pool. We propose that the Proposed Rules be revised to allow this by modifying the section regarding "L-shaped" risk retention to cover "Combined Risk Retention". ***General requirement: At the closing of the securitization transaction, the sum of (i) if the sponsor retains an interest in each class of ABS interests in the issuing entity, the percentage interest in any class so retained multiplied by the face value or, if applicable, the calculated value of each such ABS interest; provided, that the percentage interest for any class may be no greater than the lowest percentage interest retained in any other ABS interest that is subordinate in its right to receive payments of principal to such class's right to receive payments of principal and in its right to receive payments of interest to such class's right to receive payments of***

[29] The Proposal suggests that an L-shaped interest is an especially useful form of blended risk retention for two reasons. First, the even split is said to ensure that each form of risk retention is "large enough to affect the sponsor's incentives." However, the Vehicle ABS Sponsors do not believe, and are unaware of any studies or evidence that suggest, that their incentives would be diluted in any way if their retained exposures took on other forms or if certain of the exposures were relatively small. Second, the Proposal predicts that this particular allocation "should assist investors and the Agencies with monitoring compliance." However, the Vehicle ABS Sponsors do not believe that properly disclosed blended risk retentions with different components would be confusing to the Agencies or investors. Furthermore, the 50-50 split represented by L-shaped retention only exists at one point in time; after closing, when the transaction begins to pay down, the two pieces will be reduced at different rates and any perceived benefit from the even allocation will disappear.

interest[30], (ii) if the sponsor retains an eligible horizontal residual interest, the calculated value of that interest minus the calculated value of that portion of the eligible horizontal residual interest retained pursuant to clause (i)[31], (iii) if the sponsor retains a seller's interest, the percentage of the collections on the assets that is allocated at closing to the related series multiplied by the principal balance of the seller's interest, and (iv) if the sponsor establishes a representative sample pool, the aggregate unpaid principal balance or securitization value, as applicable, of the assets in such pool, equals not less than 5% of the aggregate ABS interests in the issuing entity."

G. Maintaining the Retained Exposures

The Vehicle ABS Sponsors interpret the Proposed Rules as intending to require a sponsor to maintain a fixed percentage of exposure to a securitization over time rather than a fixed amount of exposure. By way of example, if a sponsor initially retained $5 of risk against $100 of ABS interests issued at closing, and if those ABS interests had amortized to $50 without any losses being incurred, the sponsor would be able to hedge, sell or otherwise dispose of half of its retained risk to maintain its 5% level of exposure and would not be required to maintain the full original exposure that now represents 10% of the ABS interests. The vertical exposure rules already implicitly allow and provide for this "pay down" of exposures to maintain a fixed percentage but the other permissible forms of exposure do not necessarily decrease at the same rate as the securitization's aggregate ABS interests.

We therefore request that a subsection be added to "Hedging, transfer and financing prohibitions" to clarify that it is permissible to transfer, hedge or otherwise eliminate a sponsor's exposure over time so long as exposures representing at least 5% of the par value of all outstanding ABS interests are still retained. ***The following clause should be added to section __.14: "(f) Permissible Transactions. Nothing in this Section __.14 prohibits a retaining sponsor from taking any actions with respect to any ABS interests or other assets, including ABS interests or other assets that it previously retained to comply with subpart B of this part with respect to a securitization transaction, if following such actions the sponsor will continue to retain ABS interests and/or assets pursuant to subpart B of this part in respect of the related securitization that are not subject to hedging arrangements prohibited by clause (b) or clause (c) or non-recourse financing prohibited by clause (e) and are in an aggregate amount that is at least equal to 5% of the par value of all outstanding ABS interests issued by the related issuing entity."***

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[30] The proviso ensures that if the sponsor retains varying percentages of ABS interests rather than, say, a fixed five percent of each tranche, then it would receive credit for its "vertical slice" of a more senior tranche only to the extent that it holds at least the same percentage interest of each tranche that is subordinate to it. This avoids the situation where a sponsor might attempt to hold a "vertical exposure" that was disproportionately comprised of more senior tranches but would allow full credit for a "bottom-heavy" retention where a sponsor retained a greater percentage of the more subordinated tranches. For example, a sponsor holding 5% of senior notes and 4% of junior notes (top-heavy) would not be allowed to count the incremental 1% holding of the senior notes as retained exposure but a sponsor holding 4% of senior notes and 5% of junior notes (bottom-heavy) could count the full amount of each towards its retention requirement.

[31] This formulation ensures that a sponsor may not "double-count" a retained eligible horizontal residual interest.

II. Qualifying Automobile Loan Securitizations

We had initially hoped that the proposal for securitizations of Qualifying Automobile Loans would allow regular prime retail loan securitizations to be subject to reduced risk retention requirements. ABS that are backed by prime retail loans have historically been collateralized and structured to ensure exceptionally strong performance, as illustrated by the fact that investors in these public securitizations have never suffered any missed interest payments or principal losses. Furthermore, there have historically been far more ratings upgrades than downgrades as a result of asset performance and conservative transaction structures in the Vehicle ABS sector. Unfortunately, the Qualifying Automobile Loan exemption proposals are drafted so narrowly and with such a focus on underwriting standards and loan characteristics that (incorrectly) assume a significant overlap between the motor vehicle and residential mortgage markets that they are presently unusable.

We do not originate retail loans using the criteria set forth in the Proposal, and doing so would have a significant and adverse impact not only on our business models that proved to be resilient through the recent financial crisis but also on the core mission of those of us that are captive auto finance companies—to assist our parent manufacturers in selling cars. From a business perspective, we cannot customize our origination standards to allow us to create pools of the proposed Qualifying Automobile Loans because (i) this would likely restrict consumers' access to credit and drive away all but the least creditworthy customers;[32] (ii) the criteria regarding loan-to-value, debt-to-income and other numeric standards do not comport with our general business models; and (iii) as discussed in more detail below, any effort to implement a "parallel" origination and securitization structure under which qualifying assets could be generated would be so expensive and difficult to administer that its cost would eclipse any possible benefits we would recognize from lower mandated risk retention.

In short, we do not believe that a Vehicle ABS transaction has ever been executed where the collateral would meet the criteria set forth in the Proposal or that attempting to originate qualifying collateral would be economical for us. Unless the Qualifying Automobile Loan provisions are reworked significantly, we expect that those provisions will remain wholly unused, despite the clear Congressional intent to foster such an asset class.

In the following sections we first describe what we see as the principal issues that arise under the proposed Qualifying Automobile Loan rules and then set forth a regime under which a sponsor could qualify for a reduction in its mandated risk retention to 2.5% of the related securitization's aggregate ABS interests if the related asset pool met certain characteristics that are measured on a pool-wide basis. While we strongly believe that the pool-based exemption described in Section II.B is the most appropriate for Qualifying Automobile Loan securitizations, in Section II.C we also describe modifications to the loan-by-loan criteria that were originally proposed that would make that approach workable for Vehicle ABS by employing more appropriate loan standards and also allowing blended pools of qualifying and non-qualifying loans.

[32] More creditworthy borrowers presumably would be able to receive financing from lenders that were following today's standard origination processes and were not demanding additional documentation in order to conform to the proposed Qualifying Automobile Loan rules.

A. Principal Issues with the Qualifying Automobile Loan Proposals

We believe that in preparing the Qualifying Automobile Loan section the drafters made a fundamental error in attempting to analogize to the residential mortgage asset class.[33] The risk profile of a residential mortgage—a relatively large, long-lived obligation that is secured by an asset the value of which fluctuates unpredictably and that is securitized in relatively small, and therefore relatively concentrated, pools—is indeed different from that of an auto loan—a smaller, shorter-lived obligation that is secured by an asset that depreciates predictably and that is typically securitized as part of a large, very diverse pool. Furthermore, vehicle assets are, within their various subclasses, largely homogeneous assets that are not particularly interest rate sensitive, are rarely refinanced and are collateralized by an asset that is easily and quickly liquidated following repossession.

This inappropriate paralleling is evident in a number of the loan level requirements in the Qualifying Automobile Loan section. First, there is a focus on debt and income verifications at origination, which have traditionally been required for only the lowest quality motor vehicle originations and have proven unnecessary due to the low principal balances of retail loans and based on the performance of all but the riskiest auto loans. Second, there is a proposed 20% down payment requirement in a market where advance rates above 100% are standard.[34] Third, the proposed requirement that the originator or its agent hold the certificate of title on the related loan could not be implemented for motor vehicles that are titled in the eleven states that require the consumer, rather than the lender, to hold the certificate of title or in the one state that holds all vehicle titles with a lien and does not address the recent proliferation of electronic titling of motor vehicles. Other features, such as the proposed maximum loan term of 60 months in a market where 72-month lending has been a standard market feature for many years, on both new and used vehicles, simply illustrate a misunderstanding of what constitutes a "standard" product in the motor vehicle marketplace. In addition, the requirement to obtain two credit reports has been statistically demonstrated by one Vehicle ABS Sponsor to be no more predictive than a single report. Finally, the requirement for straight-line amortization does not recognize that the retail auto finance industry almost uniformly uses simple interest loans where level monthly payments are made and allocated first to interest accrued and then to principal, based on the date the payment is received by the financing company.

Furthermore, we believe that the proposed exemption is under-inclusive in that it omits many types of motor vehicle transactions that are made using high-quality underwriting standards and that give rise to loans that would be appropriately securitized without mandated 5% risk retention. For example, in omitting loans to individuals who will use their vehicles for commercial uses by mandating that all loans be made to individuals to secure vehicles used for personal or family use and by failing to include motorcycles in the list of permissible "passenger vehicles", the Proposal focuses on a particular subset of the motor vehicle sector that omits

[33] The stated intention to apply standards of unsecured installment loans to the Qualifying Automobile Loan proposals is also inappropriate because in vehicle financing there is collateral, and an understanding that the collateral is a depreciating asset, which makes this type of lending fundamentally different from unsecured lending.

[34] Vehicle loans also regularly finance taxes, titling fees, ancillary products, service contracts, insurance policies and/or balances refinanced on trade-in vehicles. The Proposal not only requires a minimum 20% down payment but also demands that the customer pay 100% of the title, tax, registration and dealer-imposed fees.

equally creditworthy and low-risk products that should have equivalent access to the exemption. ***The Vehicle ABS Sponsors request that Section __.16 be modified so that the defined term "automobile loan" also includes motorcycle financing and financing for commercial users.***

The restrictions in the Proposed Rules on used vehicle financing also disregard the slower expected depreciation schedules for those vehicles and the higher values that are maintained for many used vehicles due to the "certified pre-owned" programs maintained by many manufacturers, whereby high quality vehicles coming off short term leases are remarketed and are subject to extended warranties. Therefore, in our pool-based proposal in Section II.B, below, we have eliminated the proposed limitations on used vehicles and in our alternate, modified loan-by-loan proposal in Section II.C, below, we have revised the limitations on including used vehicles to allow more flexibility to include them and still achieve reduced levels of mandatory risk retention.

B. Reduced Mandatory Risk Retention based on Pool-wide Characteristics

The Vehicle ABS Sponsors believe that the most appropriate way in which reduced risk retention for quality auto loans should be implemented is by focusing on a securitization's entire asset pool based principally upon weighted averages of specified pool characteristics. This methodology was previously utilized by the Federal Reserve Bank of New York to determine eligibility for borrowings under TALF where, for example, weighted average FICO Score was used to distinguish between prime and subprime automobile loans for determining the appropriate haircut levels. We note that while Sections 15G(c)(1)(B)(ii) and 15G(c)(2) of the Securities Exchange Act of 1934 (as amended by the Dodd-Frank Act) together permit the establishment of asset classes, such as auto loans, for which the rules allow reduced risk retention if each of the underlying assets meet certain asset-specific underwriting criteria, Section 15(G)(e)(1) also permits exceptions to the rule requiring 5% risk retention without reference to underwriting standards and without requiring that each loan in the pool meet any particular standards. We believe, therefore, that Section 15(G)(e)(1) provides statutory authority for our proposal to craft a pool-based reduced risk retention regime for prime retail loan ABS that supplements the provisions in Section __.20 that focus on loan-by-loan characteristics.

We suggest that a partial exemption for retail loan ABS should be crafted so that a transaction would qualify for reduced risk retention if the pool met all of the criteria of any of Option I, Option II or Option III below:

	A	B	C	D
	Weighted Average FICO Score[35]	Maximum Weighted Average LTV	Maximum Original Term (Greater than 60 months)	Maximum Original Term (Greater than 72 months)
Option I	700-724	110%	50%	0%
Option II	725-739	120%	65%	5%
Option III	740+	135%	80%	10%

Column A: FICO scores at origination, calculated assuming that individual obligors without FICO scores have a FICO score of 300 and excluding non-individual obligors, both of which are consistent with the weighted average FICO score calculation that was employed for TALF. Individuals may not have FICO scores because they have minimal or no recent credit history. Weighted by the principal balance of each loan as of the cutoff date.

Column B: The loan-to-value ratio would be calculated at the time of origination based on the original amount financed under the automobile loan (or, at the option of the sponsor and as disclosed to investors, the original amount financed under the automobile loan minus the amount that finances "add-on" products, such as extended warranties, service contracts or insurance)[36] divided by either the manufacturer dealer invoice price or manufacturer's suggested retail price for the related motor vehicle (if it is a new vehicle) or, for used vehicles, the value as set forth in a standard industry guide, such as the NADA Official Used Car Guide or the Kelley Blue Book (or if no value is available in a standard industry guide, the manufacturer dealer invoice price or manufacturer's suggested retail price). Weighted by the principal balance of each loan as of the cutoff date.

Column C: Percentage equal to the aggregate principal balance of the loans with original terms of greater than 60 months divided by the pool balance, each as of the cutoff date.

Column D: Percentage equal to the aggregate principal balance of the loans with original terms of greater than 72 months divided by the pool balance, each as of the cutoff date.

In order to provide investors with a more complete picture of the underlying asset pool's composition, the Vehicle ABS Sponsors also believe that it is appropriate to disclose additional data regarding FICO scores, loan-to-value ratios and original loan terms. If a sponsor wished to benefit from reduced risk retention it would also be required to provide tabular disclosure regarding the pool in which ranges of each of these values are presented and the number,

[35] As is more fully described in Section C.1, below, the Vehicle ABS Sponsors believe that FICO Scores are an appropriate metric to use in assessing the credit quality of prime automobile loans.

[36] Sponsors may find that it is appropriate to exclude these amounts because they are often cancellable at the borrower's option, in which case any unused premium or similar cost is typically applied to reduce the outstanding principal balance of the related loan. Individual sponsors should be allowed to determine whether, because of the seasoning of a related pool, their historical experience with borrowers cancelling these add-on products, the prevalence of financed add-on products in a particular pool and any other material factors, it is appropriate to exclude these amounts from the loan-to-value calculation. As stated above, a sponsor would be required to disclose to investors whether they used this alternative to calculate loan-to-value ratios.

principal balance, and pool percentage of the subset of the loans in each band would be disclosed. The added disclosure would allow investors to perform a distribution analysis to alleviate any concerns they may have about "barbelling" in pools (i.e., a scenario where the weighted averages are achieved by including loans with characteristics that are far lower than the average but that are counterbalanced by other loans with characteristics that are far higher than the average). The sponsor would also be required to disclose the manner in which it calculated the loan-to-value ratios for the loans.

The Vehicle ABS Sponsors suggest that a pool constructed according to one of these sets of criteria should be subject to a ***reduced level of mandatory risk retention equal to 2.5% of the securitization's ABS interests because we are not recommending a complete exemption from the risk retention requirements for a qualifying pool***. Investors and regulators would be assured that ABS interests backed by pools featuring these characteristics are of the highest quality and that a lower level of risk retention that corresponds to the level retained in many prime automobile loan ABS today would be appropriate.[37] We believe that this three-tier approach appropriately accounts for variations in the prime retail vehicle loan ABS marketplace, where certain characteristics that investors may expect to contribute to less predictable pool performance (e.g., a greater concentration of loans with original terms of greater than 60 months) are offset by other characteristics that give confidence that the pool as a whole has the highest credit quality (e.g., higher weighted average FICO scores). This approach would allow Vehicle ABS Sponsors to construct conforming securitizations from their regularly originated assets in the same manner as they presently create pools, albeit with a focus on higher quality assets.

The levels that are set forth above would allow most Vehicle ABS Sponsors to take advantage of reduced mandatory risk retention for the majority of their prime retail loan securitizations. For the reasons set forth above, we believe that our stable transaction structures and the historically strong performance of our prime retail loan ABS support this reduction. Furthermore, we are truly concerned that if the only options for reduced risk retention captured only the "super-prime" portion of the current prime loan marketplace then there would be significant negative consequences to this ABS sector.

For those of us that regularly securitize portfolios of prime retail loans, our portfolios typically include prime-quality loans that are nonetheless at the lower end of the levels set forth above and we expect to continue originating loans to those consumers under our usual underwriting guidelines. If the exemptions were set so high that those loans could not be included in a securitization benefitting from reduced risk retention, then we would need to consider establishing parallel securitization programs, one for qualifying "super-prime" loans and one for non-qualifying prime loans. We consider this problematic for a number of reasons.

First and foremost, this bifurcation would falsely signal to investors that the non-qualifying securitizations were of a lower credit quality or otherwise less reliable or predictable

[37] It should be noted that our willingness to craft Qualifying Automobile Loan provisions based on a reduced level of risk retention rather than a complete exemption from the risk retention requirements is strongly linked to the proposals set forth in the first part of this section that would modify the Proposed Rules to make them appropriate and workable for Vehicle ABS. Without those revisions, even this reduced level of risk retention would be unduly burdensome for us and require significant, costly modifications to our existing securitization programs.

than the conforming securitizations. In fact, we believe those assets would be representative of our portfolios' general performance and that encouraging a contrary market perception would undercut investor confidence in our securitizations and increase costs. For those of us that have spent decades building and maintaining predictable, reliable securitization programs this negative investor perception would be damaging and very counterproductive. This would also likely erect barriers to entry for new prime loan securitizers who would be forced to bear these incremental costs from the outset of their programs and might therefore find it to be inefficient to initiate securitization programs, which would be detrimental both to them and to the consumers they otherwise would serve. Maintaining conforming and non-conforming securitization programs would also double the expense of running a prime loan ABS platform, an expense that likely would not be outweighed by the reduced risk retention on the qualifying securitizations. Furthermore, while any "super-prime" securitizations would likely continue to reflect our traditional market pricing, the remaining prime securitizations likely would require higher pricing to induce investor participation, further increasing our cost of securitization. Finally, we fear that bifurcating our securitizations into conforming "super-prime" issuances and non-conforming issuances of our remaining prime assets would result in transactions that perform differently from our historical, blended pools and that neither we nor our investors would be able to look to static pool and other historical data from our legacy securitizations to forecast performance on our new, segregated securitizations. Furthermore, historical data on these new, atypical pools may not be available in a Vehicle ABS Sponsor's systems and databases and we would be unable to provide "vintage origination data" as mandated by Regulation AB for these asset pools.

C. Qualifying Automobile Loan Exemption

While we believe the most useful and appropriate form of reduced risk retention in the Vehicle ABS marketplace is the weighted averages-based approach set forth above, if you believe that it is also necessary to have reduced risk retention regulations that reflect loan-by-loan characteristics then we could support such an adjustment under certain very limited circumstances. First, the standards for qualifying assets would need to be significantly revised so that they accurately reflect top-quality origination standards presently employed in the marketplace and to avoid expensive changes to our origination and servicing systems and to our longstanding business practices. Second, so that sponsors are not forced to maintain parallel "qualifying" and "non-qualifying" securitization programs, we request that the exemption allow blended pools of qualifying and non-qualifying assets, with the level of mandated risk retention reduced according to the pool concentration of qualifying assets.

1. Product Standards: As described above, the standards set forth in Section __.20(b) are largely inapplicable to retail vehicle loan originations. As an alternative, the Vehicle ABS Sponsors believe that Section __.20(b) should be revised as follows:

> Clause (b)(1): The requirements in clause (i) that require confirmation of particular credit-related characteristics for a borrower and in clause (ii) that require determination of a borrower's debt-to-income (DTI) ratio should be eliminated. As set forth below, we instead believe that confirming that a borrower has a particular FICO Score is an appropriate method for assessing the likelihood that the borrower will perform its obligations under its loan than individual instances of delinquency, repossession or other

negative credit history because these credit performance attributes are captured by, and reflected in, the FICO Score. The prohibition against including currently delinquent loans that is set forth in clause (b)(8) and the loan-level representations in the transaction documents further ensure that these high-quality loans are well-performing assets at the time of the securitization.

Furthermore, we do not regularly use, and do not believe that other auto loan originators regularly use, borrower DTI ratios as a key component in determining whether to originate a prime auto loan because it is not a significantly predictive factor to determine whether a prime auto loan borrower will repay its loan. We also believe that focusing on DTI ratios is inappropriate for prime auto loan borrowers because we have found that these borrowers often prioritize payment of their auto loans over other debt obligations, both because their auto loan payments are often lower than their other monthly obligations (e.g., mortgage payments) and because they require automobiles for their day-to-day lives and cannot risk having their vehicles repossessed.

As an alternative, the Vehicle ABS Sponsors believe that FICO Scores are an appropriate method to assess borrowers' credit quality. FICO Scores are a widely used metric that have been used by originators for many years to track credit quality in the origination of retail loans. For many of us who originate prime retail loans, FICO Scores are an important factor in determining whether, and on what terms, we will originate a retail loan. We also note that all of us capture FICO Scores, thereby making this a criteria that can reliably be presented to investors in disclosure materials to allow comparability across securitization programs. We believe that investors in our Vehicle ABS understand the predictive value of FICO Scores and give significant weight to the disclosure regarding FICO Scores in our offering documents and in assessing the credit quality of our asset pools.

For these reasons, we propose to include a matrix that allows us to consider an auto loan to be "qualifying" if (i) the related borrower has a FICO Score ranging from 680 to 699 and the loan-to-value ratio (LTV) for the related loan is no greater than 105%, (ii) the borrower has a FICO Score ranging from 700 to 724 and the LTV is no greater than 110%, (iii) the borrower has a FICO Score ranging from 725 to 739 and the LTV is no greater than 120% or (iv) the borrower has a FICO Score that is 740 or greater and the LTV is no greater than 135%. We believe that this approach appropriately accounts for variations in the prime retail loan ABS marketplace, where a higher FICO Score has reliably been found to correspond to a lower risk of borrower delinquency or default, even on loans with higher loan-to-value ratios. We also propose that LTV should be calculated based on the standardized definition that is set forth in Section II.B, above. We believe that this standardized definition provides an accurate measure of this ratio while also providing investors with a comparable computation across different Vehicle ABS programs.

Clause (b)(2): We propose to modify this clause to provide that an originator must obtain a copy, either physical or electronic, of a single credit report from a consumer reporting

agency within thirty days of making a credit decision regarding the auto loan.[38] This time period is appropriate because, unlike in the residential mortgage sector, an auto loan is generally funded very shortly after a credit decision is made and the related contract is signed.

Clause (b)(3): We propose to eliminate this clause requiring a specified down payment on each loan and instead would rely on the maximum loan-to-value ratios for each qualifying Automobile Loan that are set forth under our revised clause (b)(1).

Clause (b)(4): In eleven states the borrower, rather than the lender, is required to hold the certificate of title and in one state the certificate of title for a vehicle that has a lien indication is maintained by the state itself. Therefore, we have modified this clause to provide that any physical certificates of title must be held by or on behalf of the securitization's servicer or its affiliate or agent in those cases where that is permissible under applicable law. This modification also accounts for the fact that in many cases a servicer retains physical possession of the certificates of title but in other cases a collateral agent or subservicer is engaged to hold the certificates of title. In any case, this ensures that physical[39] certificates of title will be held by an appropriate party to the securitization at all times that it is possible to do so under applicable law.

Clause (b)(5): 72 month loans have been commonplace in the auto loan sector, and in Vehicle ABS, for many years and we have not identified any increased incidence of loss, default or delinquency on those loans that would justify excluding them from the Qualifying Automobile Loan rules. Therefore, we have modified this clause to provide that for new vehicles the term of the contract may be up to 72 months from the contract date.

Clause (b)(6): We have modified this clause in two ways. First, we have indicated that the model year of a used vehicle may not be greater than six years old as of the related contract date. Second, we have modified the Proposal regarding the permissible length of a contract relating to a used vehicle by providing that the term may not be greater than (i) 72 months, if the used vehicle is up to or including four years old as of the contract date, (ii) 60 months, if the used vehicle is five years old as of the contract date or (iii) 48 months, if the used vehicle is six years old as of the contract date. We believe that these limitations on loan terms accurately reflect the industry's standards for used vehicle underwriting while also accounting for any increased likelihood or severity of loss when financing older model used vehicles. They also reflect the prevalence and market acceptance of 72 month loans, as described in the preceding section.

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[38] Section II.A, above, describes the reliability of using a single credit report.

[39] We have made these provisions apply only to physical certificates of title and not to electronic certificates of title. Electronic certificates of title are currently in use in approximately thirteen states and we expect that more states will move to this system in the coming years. There is no need to afford similar protections as those for physical certificates of title because these electronic titles are effectively maintained by the related state, rather than by the borrower or the lender.

Clause (b)(7)(ii)(A): Because auto loans are "simple interest" loans rather than "straight line amortization" loans, we propose to modify this clause to provide that the terms of the contract must provide for a level monthly payment that fully amortizes the amount financed over the term of the loan. We believe that this achieves the result that was intended by the Proposal while properly reflecting the amortization methodology that is almost universally used in the auto loan marketplace.

Clause (b)(7)(ii)(C): We propose to change this clause to mandate that the first payment on the automobile loan must be made within 45 days of the loan's contract date, rather than its date of origination. These two dates may differ and it has been our practice always to use the proposed formulation in setting the borrower's initial payment date. We do not believe that there would be any benefit to changing our origination practices to reflect this incremental change.

Clause (b)(8): It is not possible for us to select an asset pool for a Vehicle ABS transaction on the cutoff date and then assess on the closing date whether each auto loan in the pool is current as of that day and either remove from the pool any loan that is not current or modify our risk retention at closing to reflect any delinquencies that exist on that date. Additionally, this standard, which would remove from the Qualifying Automobile Loan pool any loan on which $1 of a scheduled payment is one day past due is far more stringent than investors have ever demanded or expected. For many years the standard practice in Vehicle ABS has been for the transaction documents to contain a representation that as of the cutoff date, no auto loan in the asset pool is more than 30 days contractually delinquent (as defined under the related servicer's collection policies). We propose that this same standard apply in determining whether an auto loan should be treated as a Qualifying Automobile Loan.

To ensure that this test properly reflects the related loan's status at closing, we additionally propose that the date on which this testing occurs must be within 62[40] days of the closing date. This standard will allow us to continue to assemble our asset pools according to a transaction schedule that gives us sufficient time to collect the necessary data to present to investors while also confirming that any loan that met the Qualifying Automobile Loan standards on the cutoff date has not become severely delinquent by closing. We have also added a requirement that, as of the cutoff date, no payment may have been extended on any Qualifying Automobile Loan to further ensure that these assets are performing well at the time they are added to the asset pool.

Clause (b)(9): We have removed this clause in its entirety. Insofar as we will be obligated to disclose the manner in which we are meeting our risk retention obligations in the materials that we provide to investors at or prior to closing, we will already be obligated to ensure that the information is correct so that we do not run afoul of the securities laws. We would specifically note that the reviews that will be mandated beginning in 2012 under Rule 193 of the Securities Act and the corresponding disclosures that will be required pursuant to revised Item 1111 of Regulation AB (together enacting

[40] This allows sponsors to set a long first collection period that potentially spans two 31-day months.

the provisions of Section 945 of the Dodd-Frank Act) will ensure that this disclosure regarding the pool assets is complete and accurate.

Clause (c): Beginning in 2012, Rule 15Ga-1 of the Securities Exchange Act and revised Items 1104 and 1111 of Regulation AB (together enacting to provisions of Section 943 of the Dodd Frank Act) will require sponsors to report on and disclose demands to repurchase assets from their securitizations due to breaches of representations and warranties. Therefore, we propose that this clause relating to the repurchase of any auto loans that were improperly characterized as Qualifying Automobile Loans be eliminated and that instead sponsors be required to make representations and warranties in their transaction documents that each auto loan that is treated as a Qualifying Automobile Loan for the purpose of reducing the mandated level of risk retention meets all of the requirements for qualification. If any such loan was subsequently found not to meet those requirements, a mechanism would thereby exist in the transaction documents to cause it to be repurchased from the asset pool and Rule 15Ga-1 and Regulation AB would together ensure the reporting and disclosure of any demand for those repurchases.

Assets with the foregoing characteristics are regularly originated by the Vehicle ABS Sponsors today and represent our most reliably high-performing originations. Therefore, as the concentration of these high-quality assets increases in a Vehicle ABS pool, the level of mandatory risk retention should correspondingly decrease.

In order to give effect to these revisions, the definition of "originator" that is set forth in Section __.2 should also be revised. This term is not defined in Regulation AB but since that regulation was enacted the market convention for Vehicle ABS has been that even if a loan is originated in the name of a third-party, if there is another entity whose underwriting criteria were utilized in approving and funding the loan and if that other entity acquired the loan from the third-party, then that entity, rather than the third-party, would be the "originator." For instance, if a motor vehicle dealer worked with a finance company to apply that finance company's underwriting criteria to a proposed loan and then sold the loan to the finance company upon, or promptly following, origination, then the finance company, rather than the dealer, would be the "originator."

2. Reduced Retention: The Vehicle ABS Sponsors do not expect to use Qualifying Automobile Loan provisions that rely on asset-level characteristics even if the foregoing changes were made unless they could blend pools of qualifying and non-qualifying assets. Because no Vehicle ABS Sponsor expects that it would ever originate only qualifying assets, if blended pools were prohibited the sponsors would have to establish parallel securitization programs, one for qualifying assets and one for non-qualifying assets. The Vehicle ABS Sponsors have determined that they would not do this for the reasons set forth at the end of Section II.B, above. As stated throughout this section, the Vehicle ABS Sponsors have traditionally maintained significant exposures to their securitizations and expect to do so in the future. At best, executing a qualifying securitization would prevent their having to retain a degree of additional exposure, but not to a degree that would offset the expense.

We also note that it is appropriate to allow this reduced retention based upon the amount of the pool composed of Qualifying Automobile Loans at closing and not to adjust the reduction

in mandatory risk retention based on variables such as the expected amortization schedules of the qualifying and non-qualifying loans, the relative remaining terms of the respective sub-pools or other characteristics.[41] The Qualifying Automobile Loan criteria as we have modified them in this Section ensure that Vehicle ABS that are supported by these quality assets "are collateralized by high-quality, low credit risk loans" (Release at 24134) the presence of which merits a reduction in mandatory risk retention. The purpose of the Proposed Rules is not to ensure that Vehicle ABS transactions will amortize in a particular way or that investors will benefit from a pool that remains composed of a static ratio of qualifying vs. non-qualifying loans for the life of the transaction. Furthermore, we would expect that the usual pool selection criteria that are utilized in selecting asset pools, and the loan-level representations and warranties that are disclosed to investors, also help ensure that the high-quality features of the Qualifying Automobile Loans will not be undercut by other factors.

Therefore, the Vehicle ABS Sponsors request that they be able to securitize blended pools of qualifying and non-qualifying assets. ***In those cases, (i) the provisions of Section __.20 (revised as described above) would apply only to those assets that the sponsor represents at closing are qualifying assets and (ii) Section __.17 would be revised by the following proviso "; provided, that if less than 100% of the assets in the asset pool supporting a securitization satisfy the standards provided in Section __.20, then the risk retention requirements in subpart B of this part shall apply to that securitization transaction but the economic interest in the credit risk of the securitized assets in accordance with any one of Section __.4 through __.8 will equal 5% multiplied by a fraction, the numerator of which is the aggregate principal balance as of the cutoff date for the securitization of those assets in the related asset pool that do not satisfy the standards provided in Section __.20 and the denominator of which is the aggregate principal balance as of the cutoff date for the securitization of the entire asset pool."***

III. Risk Retention in ABCP Conduit Transactions

The Vehicle ABS Sponsors believe that it is critical that the risk retention rules include functional provisions with respect to asset-backed commercial paper ("ABCP"). All of the Vehicle ABS Sponsors have used, or are currently using, multi-seller ABCP conduits sponsored by major financial institutions ("ABCP Conduits") to provide funding for a portion of their financial assets. ABCP Conduits are an integral source of funding for these financial assets. ABCP Conduits can be used to provide warehouse or term funding for both "mainstream" retail loan, retail lease and floorplan assets and for "off-the-run" assets that Vehicle ABS Sponsors do not wish to fund through public offerings or other widely distributed transactions.

We use ABCP Conduits for many reasons, including that:

- they provide cost-effective funding
- they allow flexible terms that cannot easily be achieved in the term markets

[41] Attempting to segregate an asset pool into qualifying and non-qualifying subpools to test for these factors would also introduce a level of operational complexity to pool selection that is inconsistent with current best practices and would be very difficult to implement, to maintain and to properly disclose to investors.

- they can be accessed quickly for funding
- they offer confidentiality

ABCP Conduits have provided funding for our financial assets for over 20 years. It is extremely important to the Vehicle ABS Sponsors that the ABCP marketplace remain active. Unfortunately, it appears to us that the proposed rules for ABCP Conduits would result in a virtual shutdown of that marketplace. We urge the Agencies to rethink substantially the approach taken with respect to ABCP Conduits.

We know that several comment letters have urged the Agencies to exclude ABCP from the risk retention rules, and we hope that the Agencies heed those letters. In the event, however, that ABCP continues to be subject to the risk retention rules, we believe that the Agencies should make the following changes to the "eligible ABCP conduit" provisions in Section __.9 of the Proposed Rules to permit the Vehicle ABS Sponsors and other originating sellers to utilize ABCP Conduits:

Disclosure of Originator-Sellers. Section __.9(b) of the Proposed Rules would require eligible ABCP conduits to disclose to prospective ABCP investors and, upon request, to the Commission and each related conduit sponsor's applicable Federal banking agency, the names of the relevant originator-sellers. We think this requirement is inappropriate, and we ask that the Agencies remove it from the Proposed Rules.

We value the confidentiality provided by ABCP Conduit transactions and believe that it should continue. If these transactions were not confidential, we might well reduce our usage of them. We are aware of no significant indications from ABCP investors that they believe such disclosure to be important. Indeed, we note that ABCP sponsors and ABCP investors have agreed in the initial ASF Letter that disclosure of originator-sellers to investors is not necessary. We understand that investors rely primarily on liquidity support from the ABCP sponsor (and perhaps other financial institutions) to backstop the repayment of ABCP.

Limitation to Conduit-Only Transactions. Clause (3) of the Proposed Rules' definition of "eligible ABCP conduit" requires that all interests issued by an intermediate SPV be transferred to one or more ABCP conduits or retained by the related originator-seller. We find this limitation very troubling for three reasons.

First, the definition of "intermediate SPV" may encompass the entities that we use as depositors in ABCP Conduit transactions.[42] A depositor is bankruptcy-remote (satisfying clause (1) of the definition), purchases assets from the originator-seller (clause (2)), and may be the entity to transfer an interest in the assets to the eligible ABCP conduit (clause (3)). Many of us use depositors in ABCP Conduit transactions that are also used in public offerings and other transactions. A prohibition on multi-use depositors flies in the face of ordinary practice. If other

[42] Many of us, in transactions with ABCP Conduits, use our standard structure in which the originator-sponsor transfers assets to the depositor, which deposits the assets into an issuing entity. The issuing entity then may either transfer to the depositor a note or other interest in the assets (which the depositor would then transfer to the ABCP Conduit), or the issuing entity may transfer the interest directly to the ABCP Conduit.

market participants are comfortable with the use of a single depositor for multiple transactions, we fail to see why the risk retention rules should require otherwise. To do so would simply impose incremental costs upon the Vehicle ABS Sponsors and other originator-sellers.

Second, even if the intermediate SPV is limited to the issuing entity, this limitation is still problematic. The difficulty is most stark in the case of issuing entities that are floorplan master trusts. These master trusts issue ABS interests through many distribution channels—Rule 144A offerings, public offerings, ABCP conduit transactions and perhaps others. It would be extremely impracticable and needlessly expensive to require us to split our master trusts in two, in order to have one trust that funded solely through eligible ABCP conduits and another which funded through other sources. This same problem can arise in the case of issuing entities for other asset classes, whether in revolving structures or amortizing structures: an ABCP Conduit may be just one of the holders of interests in an issuing entity for a retail loan securitization, for example.

Third, this limitation fails to comprehend the reasonably common practice of establishing facilities with "clubs" of banks, some of which choose to use their ABCP Conduits to provide funding and some of which provide funding directly from the bank (so-called "balance sheet lending"). For originator-sellers who wish to establish very large warehouse facilities, or who simply wish to obtain funding from a diverse group of financial institutions, such a limitation could be extremely problematic. As an example, one of the Vehicle ABS Sponsors effected a major funding facility with a large group of financial institutions; 70 per cent of those institutions used ABCP Conduit funding, while the remaining 30 per cent opted for balance sheet lending. The limitation in clause (3) would not allow transactions to be funded from a mixed group of eligible ABCP conduits and on-balance sheet lenders.

For all of the foregoing reasons, we think clause (3) of "eligible ABCP conduit" is unwise. We are not aware of any problem that would be solved by this limitation, but we have identified a number of problems that it would create. We urge that it be removed.

Requirement for Risk Retention both by Originator-Seller and by ABCP Conduit Sponsor. The Proposed Rules require both that the originator-seller hold 5% risk retention and that the conduit sponsor meet the liquidity facility requirements in clause (4) of "eligible ABCP conduit." We do not see the justification for this "double risk retention" requirement. The liquidity facility standard provides ample risk retention for the benefit of the ABCP investors; we do not think that the regulations need to protect the ABCP Conduits themselves. In our collective experience, ABCP Conduits have quite effectively protected their own interests in the transactions which we have effected with them over the past 20 years. If an ABCP Conduit is willing to fund our assets with less than 5% risk retention, it should be permitted to do so.

Limitation of Permitted Form of Risk Retention. Section __.9(a) of the Proposed Rules requires that the originator-seller for each ABCP transaction in an "eligible ABCP conduit" to maintain a specified eligible horizontal residual interest in accordance with Section __.5 of the Proposed Rules. The Proposed Rules do not permit the use of any other form of risk retention by the originator-seller. In the event that the Agencies continue to require retention by both the origination-seller and the ABCP Conduit sponsor, we believe this provision must be changed.

We find this limitation to be quite troublesome. For example, some of us have minimum required seller's interests in our floorplan master trusts and, in the future, we may use other forms of risk retention. We do not understand why the Agencies would propose such a limit; we believe that any type of risk retention that is generally acceptable should be permissible in a transaction with an eligible ABCP conduit.

Further, we think that a transaction that, on its own, would qualify for zero or reduced risk retention should be permitted to be effected through an eligible ABCP conduit on the same basis. It would be quite odd to say that a transaction could be effected with zero risk retention in the public market, but then to require 5% risk retention on top of the 100% liquidity facility if that same transaction were effected through an ABCP Conduit.

IV. Request for Re-Proposal

As we have stated throughout this Letter, we fully understand the value of risk retention in the ABS marketplace. This is evidenced by the fact that we have traditionally retained significant exposure to our Vehicle ABS for the benefit of our investors even without a regulatory mandate to do so. However, in order to maintain a properly functioning Vehicle ABS marketplace, it is absolutely critical that the permissible forms of risk retention for Vehicle ABS be substantially revised. We have set forth our views on these provisions in Part I of our "Comments on the Proposal." Furthermore, if the Congressional intent to encourage high quality underwriting of auto loans is to be observed, then either a pool-wide approach such as we have suggested should be adopted or the Qualifying Automobile Loan exception should be revised substantially. Our proposals on these topics are set forth in Part II of our "Comments on the Proposal." Finally, Part III of our "Comments on the Proposal" sets forth revisions to the "eligible ABCP conduit" provisions of the Proposed Rules so that the Vehicle ABS Sponsors can continue to use ABCP conduits for funding a portion of their financial assets.

Our proposals are very detailed, because we have sought – to the greatest extent practicable – to maintain the framework used by the Agencies while suggesting revisions that will accommodate the nuances of our securitizations. We expect that other commenters have also provided equally detailed comments. The process of melding all of the comments into a revised risk retention framework will be daunting. But it is critically important to the future of the securitization markets that the rules governing mandatory risk retention be properly implemented.

Accordingly, we strongly recommend that the Proposed Rules be re-proposed for public review and comment prior to implementation, rather than being presented in final form. Doing so will allow us and other market participants to assess whether the rules will be implemented in a fashion that will permit ongoing securitizations of our assets. We think it is imperative to provide us and other market participants with the opportunity to advise you of any further changes that may be necessary to ensure a well-functioning securitization marketplace and to avoid unintended consequences such as increased costs to consumers, a decrease in new product development at vehicle manufacturers or significant new barriers to entry for new auto originators.

In considering our request for re-proposal, we urge you to do so even if it is at the expense of a shorter comment period for the revised Proposed Rules and/or a shorter implementation period for the final rules. We would much prefer to have another opportunity to work with you to ensure that these risk retention rules are correct and workable, even if that means providing additional comments on an expedited basis or accelerating our internal processes for implementing the enacted rules.

IV. Conclusion

Vehicle ABS is a mature, well-performing and well-structured asset class. Even through the recent financial crisis our transactions and structures withstood significant volatility while still protecting investors. Furthermore, this is an asset class where risk retention by the sponsor or its affiliates has been the norm since the inception of Vehicle ABS over two decades ago.

For all of these reasons it is imperative that the Proposed Rules be modified so that we are able to satisfy the risk retention requirements by the methods described throughout this Letter. Any requirement that would mandate risk retention in the forms prescribed by the Proposed Rules in their current form would force us to significantly restructure our deals, which would negatively impact investors—who would then be presented with far more complex transactions with an untested ability to withstand market disruptions—and consumers—who would find that their vehicle financing options were both more expensive and less plentiful than they are today.

* * * *

We greatly appreciate the hard work that the Agencies and their staffs have put into the Proposal and the opportunity to comment on the Proposal. If you wish to discuss further any of the points raised in this letter please let us know.

Sincerely,

ALLY FINANCIAL INC.

By: /s/ Christopher A. Halmy
Name: Christopher A. Halmy
Title: Treasurer

AMERICAN HONDA FINANCE CORPORATION

By: /s/ Jon Nomura
Name: Jon Nomura
Title: Director, Securitization

BMW US CAPITAL, LLC

By: /s/ Ralf Edelmann
Name: Ralf Edelmann
Title: President

CARMAX BUSINESS SERVICES, LLC

By: /s/ Thomas W. Reedy
Name: Thomas W. Reedy
Title: Senior Vice President, Chief Financial Officer and Treasurer

FORD MOTOR CREDIT COMPANY LLC

By: /s/ Susan J. Thomas
Name: Susan J. Thomas
Title: Secretary and Associate General Counsel

By: /s/ Scott D. Krohn
Name: Scott D. Krohn
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GENERAL MOTORS FINANCIAL COMPANY, INC.

By: /s/ Susan B. Sheffield
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HARLEY-DAVIDSON FINANCIAL SERVICES, INC.

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Name: James Darrell Thomas
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HYUNDAI CAPITAL AMERICA

By: /s/ Min Sok Randy Park
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Name: Mary Ellen Kummer
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NISSAN MOTOR ACCEPTANCE CORPORATION

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SANTANDER CONSUMER USA INC.

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By: /s/ Christopher Ballinger
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By: /s/ Martin Luedtke
Name: Martin Luedtke
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WORLD OMNI FINANCIAL CORP.

By: / s/ Eric M. Gebhard
Name: Eric M. Gebhard
Title: Treasurer

ANNEX A

Proposed Language for Modifications to Risk Retention

Following are the suggested revisions to the text of the Proposed Rules that we discuss throughout our Comment Letter. Proposed additions to the text of the Proposed Rules are marked with ***bold italics*** and proposed deletions from the text are marked with ~~strikethroughs~~.

§ __.2 Definitions.

. . .

Eligible horizontal residual interest means, with respect to any securitization transaction, an ABS interest ***or ABS interests*** in the issuing entity that:

(1) ***If the transaction documents expressly set forth the order in which losses that are incurred on the securitized assets are to be allocated to the ABS interests,*** ~~Is~~ ***is*** allocated all losses on the securitized assets ***(or for an ABS interest that is part of a series issued by a revolving asset master trust, is allocated all losses that are allocated to that series)*** (other than losses that are first absorbed through the release of funds from a premium capture cash reserve account, if such an account is required to be established under § __.12 of this part) until the par value of such ABS interest is reduced to zero;

(2) ***Satisfies one of the following conditions: (a)*** ~~H~~***h***as the most subordinated claim to payments of ~~both~~ principal ***of all ABS interests that are entitled to receive principal payments on each payment date after the commencement of the amortization period and has the most subordinated claim to payments of interest of all ABS interests that are entitled to receive interest payments on each payment date; (b) if it is an ABS interest issued by a revolving asset master trust, (i) at all times has the most subordinated claim to payments of interest of all ABS interest in its series that are entitled to receive interest payments on each payment date and (ii) following the commencement of the amortization period for its series, has the most subordinated claim to payments of principal of all ABS interest in its series that are entitled to receive principal payments on each payment date; or (c) is entitled to payments on each payment date only after all other ABS interests of the same series have been paid all principal and interest due on that payment date*** ~~and interest by the issuing entity~~; and

(3) Until all other ABS interests in the issuing entity are paid in full***, satisfies one or more of the following conditions: (a)*** is not entitled to receive any payments of principal made on a securitized asset, provided, however, an eligible horizontal residual interest may receive its current proportionate share of scheduled payments of principal received on the securitized assets in accordance with the transaction documents***, (b) if the transaction documents do not provide for the separate collection and distribution of interest, scheduled payments of principal and unscheduled payments of principal on the securitized assets, is not entitled to receive payments unless the aggregate percentage decrease in the outstanding principal balance or securitization value, as applicable, of all related ABS interests that do not comprise the eligible horizontal residual interest since the closing date is at least equal to the percentage equivalent of***

the aggregate decrease in the principal balance or securitization value, as applicable, of the securitized assets plus the aggregate decrease (if any) in the amount on deposit in any reserve accounts since the closing date divided by the sum of the principal balance or securitization value, as applicable, of the securitized assets as of the cutoff date plus the amount on deposit in any reserve accounts on the closing date); (c) if the transaction documents provide for a revolving period that commences on the closing date but the ABS interest is not issued by a revolving asset master trust and if the transaction documents also do not provide for the separate collection and distribution of interest, scheduled payments of principal and unscheduled payments of principal on the securitized assets, is not entitled to receive payments unless the aggregate percentage decrease in the outstanding principal balance or securitization value, as applicable, of all related ABS interests that do not comprise the eligible horizontal residual interest since the first day of the amortization period is at least equal to the percentage equivalent of the aggregate decrease in the principal balance or securitization value, as applicable, of the securitized assets plus the aggregate decrease (if any) in the amount on deposit in any reserve accounts since the first day of the amortization period divided by the sum of the principal balance or securitization value, as applicable, of the securitized assets as of the first day of the amortization period plus the amount on deposit in any reserve accounts on the first day of the amortization period); or (d) if it is an ABS interest issued by a revolving asset master trust, is not entitled to receive payments of principal collections allocated to such series after the commencement of the amortization period for that series unless all related ABS interests that do not comprise the eligible horizontal residual interest have received at least their allocable share of all principal collections and losses allocated to such series since the first day of the amortization period. For securitizations effected using revolving asset master trusts, the "allocable share" for the ABS interests of a series that do not comprise the eligible horizontal residual interest is the sum of the outstanding principal balance of each of those ABS interests divided by the sum of that series' share of the pool balance and the reserve account balance for that series, each as of the first day of that series' amortization period.

. . .

Originator means a person who:

(1) through an extension of credit or otherwise creates an asset that collateralizes an asset-backed security; and

(2) sells the asset directly or indirectly to a securitizer***;***

provided that if the person who initially extends credit or otherwise creates an asset that collateralizes an asset-backed security utilizes the underwriting criteria of another person in approving and funding the asset and if that other person acquires the asset from the person who initially extended credit or otherwise created the asset, then that other person whose underwriting criteria were utilized and who acquired such asset will be the originator of that asset.

. . .

Securitized asset means an asset that:

(1) Is transferred, sold, or conveyed to an issuing entity; and

(2) Collateralizes the ~~ABS interests~~ ***investor interests*** issued by the issuing entity.

. . .

Seller's interest means an ABS interest***, ABS interests or portions thereof***:

(1) In ~~all of~~ the ***securitized*** assets ~~that: (i) Are~~ owned or held by the issuing entity~~; and (ii Do not~~ ***other than those that*** collateralize ~~any~~ other ***specified*** ABS interests issued by the issuing entity;

(2) That is pari passu ***or subordinate to*** ~~with~~ all other ABS interests issued by the issuing entity with respect to the allocation of all ~~payments~~ ***collections*** and losses ***with respect to the securitized assets*** prior to an early amortization event (as defined in the transaction documents); and

(3) That adjusts for fluctuations in the outstanding principal balances of the securitized assets.

§ __.3 Base risk retention requirement.

. . .

(c) Affiliates. Any economic interest in the credit risk of the securitized assets that is retained in accordance with any one of § __.4 through § __.11 of this part by an entity that is a consolidated affiliate of the sponsor of the related securitization transaction shall be treated for all purposes under this [subpart B] as retention of that economic interest by the sponsor for so long as that entity remains a consolidated affiliate of the sponsor.

§ __.5 Horizontal risk retention.

(a) General Requirement. At the closing of the securitization transaction, the sponsor retains an eligible horizontal residual interest in an amount that is equal to at least five percent of the par value of all ABS interests in the issuing entity issued as part of the securitization transaction.

(b) ~~Option to hold base amount in h~~***H***orizontal cash reserve account. ~~In lieu of retaining an eligible horizontal residual interest in the amount required by paragraph (a) of this section, the sponsor may, at closing of the securitization~~

~~transaction, cause to be established and funded, in cash, a horizontal cash reserve account in the amount specified in paragraph (a)~~***Amounts that are on deposit in a reserve account for a securitization transaction may be included in the sponsor's valuation of any eligible horizontal residual interest,*** provided that the account meets all of the following conditions:

(1) The account is held by the trustee (or person performing similar functions) in the name and for the benefit of the issuing entity;

(2) Amounts in the account are invested ~~only in:~~

~~(i) United States Treasury securities with maturities of 1 year or less; or~~

~~(ii) Deposits in one or more insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that are fully insured by federal deposit insurance; and~~ ***according to the same investment criteria that are set forth in the transaction documents regarding investments of amounts on deposit in other trust accounts relating to the same series of ABS interests, or a subset of those other permitted investments.***

(3) Until all ABS interests in the issuing entity are paid in full or the issuing entity is dissolved:

(i) Amounts in the account shall be ***released only:***

(A) ~~released~~ to satisfy ***any*** payments ***due and payable*** on ABS interests in the issuing entity on any payment date ***which, if unpaid on such payment date or during any grace period set forth in the transaction documents, would cause an event of default or similarly denominated event to occur under the transaction documents and for*** ~~on~~ which the issuing entity has insufficient funds from any source ~~(including any premium capture cash reserve account established pursuant to § __.12 of this part)~~ to ***pay such amounts*** ~~satisfy an amount due on any ABS interest~~;

(B) to satisfy any other obligations of the issuing entity that are eligible to be funded with such amounts in accordance with the transaction documents; and

~~(ii) No other amounts may be withdrawn or distributed from the account except that:~~

~~(A) Amounts in the account may be released to the sponsor or any other person due to the receipt by the issuing entity of scheduled payments of principal on the securitized assets, provided that, the issuing entity distributes such payments of principal in accordance with the transaction documents and the amount released from the account on any date does not exceed the product of:~~

~~(1) The amount of scheduled payments of principal received by the issuing entity and for which the release is being made; and~~

~~(2) The ratio of the current balance in the horizontal cash reserve account to the aggregate remaining principal balance of all ABS interests in the issuing entity; and~~

(~~B~~ ***C***) ~~Interest~~ ***Earnings*** on investments made in accordance with paragraph (~~b~~ ***a***)(2) may be released once received by the account**.**

(c) Disclosures. A sponsor utilizing this section shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption "Credit Risk Retention":

(1) ~~If the sponsor retains risk through an eligible horizontal residual interest: (i)~~ The amount (expressed as a percentage and dollar amount) of the eligible horizontal residual interest the sponsor will retain (or did retain) at the closing of the securitization transaction, and the amount (expressed as a percentage and dollar amount) of the eligible horizontal residual interest that the sponsor is required to retain under this section; and

~~(ii)~~***2*** A description of the material terms of the eligible horizontal residual interest to be retained by the sponsor;

(***3***) ~~If the sponsor retains risk through the funding of a horizontal cash~~ ***If all or a portion of the risk retained through an eligible horizontal residual interest represents cash on deposit in a*** reserve account:

(i) The dollar amount to be placed (or placed) by the sponsor in the ~~horizontal cash~~ reserve account and the dollar amount the sponsor is required to place in such an account pursuant to this section; and

(ii) A description of the material terms of the ~~horizontal cash~~ reserve account; and

(***4***) The material assumptions and methodology used in determining the aggregate dollar amount of ABS interests issued by the issuing entity in the securitization transaction, including those pertaining to any estimated cash flows and the discount rate used.

§ __.6 ~~L-Shaped~~ *Blended* risk retention.

(a) General requirement. At the closing of the securitization transaction, ***the sum of (i) if the sponsor retains an interest in each class of ABS interests in the issuing entity, the percentage interest in any class so retained multiplied by the face value or, if applicable, the calculated value of each such ABS interest; provided, that the percentage interest for any class may be no greater than the***

lowest percentage interest retained in any other ABS interest that is subordinate in its right to receive payments of principal to such class's right to receive payments of principal and in its rights to receive payments of interest to such class's right to receive payments of interest; (ii) if the sponsor retains an eligible horizontal residual interest, the calculated value of that interest minus the calculated value of that portion of the eligible horizontal residual interest retained pursuant to clause (i); (iii) if the sponsor retains a seller's interest, the percentage of the collections on the assets that is allocated at closing to the related series multiplied by the principal balance of the seller's interest; and (iv) if the sponsor establishes a representative sample pool, the aggregate unpaid principal balance or securitization value, as applicable, of the assets in such pool, equals not less than five percent of the aggregate ABS interests in the issuing entity. ~~the sponsor~~:

~~(1) Retains not less than 2.5 percent of each class of ABS interests in the issuing entity issued as part of the securitization transaction; and~~

~~(2) Retains an eligible horizontal residual interest in the issuing entity, or establishes and funds in cash a horizontal cash reserve account that meets all of the requirements of § __.5(b) of this part, in an amount that in either case is equal to at least 2.564 percent of the par value of all ABS interests in the issuing entity issued as part of the securitization transaction other than any portion of such ABS interests that the sponsor is required to retain pursuant to paragraph (a)(1) of this section.~~

(b) Disclosure requirement. A sponsor utilizing this section shall comply with all of the disclosure requirements set forth in § __.4(b)***,*** and § __.5(c) of this part.

§ __.7 Revolving asset master trusts.

(a) General requirement. At the closing of the securitization transaction and until all ABS interests ***issued as part of that securitization transaction*** ~~in the issuing entity~~ are paid in full, the ~~sponsor~~ ***depositor*** retains a seller's interest of not less than five percent of the ~~unpaid~~ ***outstanding*** principal balance of ~~all the assets~~ ***the investor interests*** ~~owned or held by the issuing entity~~ ***issued as part of that securitization transaction*** provided that:

(1) The issuing entity is a revolving asset master trust; and

(2) All of the securitized assets are loans or other extensions of credit that arise under revolving accounts ***or other revolving financing arrangements, or participation or other interests therein, including a collateral certificate or similar interests in a trust or other entity that holds such assets***.

§ __.8 Representative sample.

(a) In general. At the closing of the securitization transaction, the sponsor retains ownership of a ~~representative sample of the~~ ***designated*** pool of assets ~~that are designated for securitization in the securitization transaction and draws from such pool all of the securitized assets for the securitization transaction~~, provided that:

(1) At the time of issuance of asset-backed securities by the issuing entity, the unpaid principal balance of the assets comprising the representative sample retained by the sponsor is equal to at least 5~~.264~~ percent of the unpaid principal balance of all the securitized assets in the securitization transaction; and

(2) The sponsor complies with paragraphs (b) through (***f~~g~~***) of this section.

(b) Construction of representative sample.

(1) Designated pool. ***The assets included in the designated pool must meet all eligibility criteria set forth in the transaction documents for assets that were included in the securitized pool.*** ~~Prior to the sale of the asset-backed securities as part of the securitization transaction, the sponsor identifies a designated pool (the "designated pool") of assets:~~

~~(i) That consists of a minimum of 1000 separate assets;~~

~~(ii) From which the securitized assets and the assets comprising the representative sample are exclusively drawn; and~~

~~(iii) That contains no assets other than those described in paragraph (b)(1)(ii) of this section.~~

~~(2) Random selection from designated pool. (i) Prior to the sale of the asset-backed securities as part of the securitization transaction, the sponsor selects from the assets that comprise the designated pool a sample of such assets using a random selection process that does not take account of any characteristic of the assets other than the unpaid principal balance of the assets.~~

~~(ii) The unpaid principal balance of the assets selected through the random selection process described in paragraph (b)(2)(i) must represent at least 5 percent of the aggregate unpaid principal balance of all the assets that comprise the designated pool.~~

(~~3~~***2***) Equivalent risk determination. Prior to the sale of the asset-backed securities as part of the securitization transaction, the sponsor determines, using a statistically valid methodology, that ***the mean of the FICO scores, outstanding principal balance and remaining terms of the assets in a sample of assets drawn from the designated pool*** ~~for each material characteristic of the assets in the designated pool, including the average unpaid principal balance of all the assets, that the mean of any quantitative characteristic, and the proportion of any characteristic that is categorical in nature, of the sample of assets randomly selected from the designated pool pursuant to paragraph (b)(2) of this section~~ is within a 95 percent two-tailed confidence interval of the mean ~~or proportion, respectively,~~ of the same characteristic of the assets in the designated pool.

(c) Sponsor policies, procedures and documentation.

(1) The sponsor has in place, and adheres to, policies and procedures for:

(i) Identifying and documenting the material characteristics of assets included in the designated pool;

(ii) Selecting assets ~~randomly~~ in accordance with paragraph (b)(***1***~~2~~) of this section;

(iii) Testing ~~the randomly selected~~ ***a*** sample of assets for compliance with paragraph (b)(***2***~~3~~) of this section;

(iv) Maintaining, until all ABS interests are paid in full, documentation that clearly identifies the assets included in the representative sample ~~established under paragraphs (b)(2) and (3) of this section~~; and

(v) Prohibiting, until all ABS interests are paid in full, assets in the representative sample from being included in the designated pool of any other securitization transaction.

(2) The sponsor maintains documentation that clearly identifies the assets in the representative sample established under ~~paragraphs (b)(2) and (3) of~~ this section.

~~(d) Agreed upon procedures report.~~

~~(1) Prior to the sale of the asset-backed securities as part of the securitization transaction, the sponsor has obtained an agreed upon procedures report that satisfies the requirements of paragraph (d)(2) of this section from an independent public accounting firm.~~

~~(2) The independent public accounting firm providing the agreed upon procedures report required by paragraph (d)(1) of this section must at a minimum report on whether the sponsor has:~~

~~(i) Policies and procedures that require the sponsor to identify and document the material characteristics of assets included in a designated pool of assets that meets the requirements of paragraph (b)(1) of this section;~~

~~(ii) Policies and procedures that require the sponsor to select assets randomly in accordance with paragraph (b)(2) of this section;~~

~~(iii) Policies and procedures that require the sponsor to test the randomly selected sample of assets in accordance with paragraph (b)(3) of this section;~~

~~(iv) Policies and procedures that require the sponsor to maintain, until all ABS interests are paid in full, documentation that identifies the assets in the representative sample established under paragraphs (b)(2) and (3) of this section; and~~

~~(v) Policies and procedures that require the sponsor to prohibit, until all ABS interests are paid in full, assets in the representative sample from being included in the designated pool of any other securitization transaction.~~

(***d***~~e~~) Servicing. Until such time as all ABS interests in the issuing entity have been fully paid or the issuing entity has been dissolved:

(1) Servicing of the assets included in the representative sample must be conducted by the same entity and under the same contractual standards as the servicing of the securitized assets; and

(2) The individuals responsible for servicing the assets included in the representative sample or the securitized assets must not be able to determine whether an asset is owned or held by the sponsor or owned or held by the issuing entity***, provided that individuals responsible for directing collections on assets to accounts for the benefit of the sponsor or the issuing entity are permitted to identify collections for such purpose***.

(***e***~~f~~) Sale, hedging or pledging prohibited. Until such time as all ABS interests in the issuing entity have been fully paid or the issuing entity has been dissolved, the sponsor:

(1) Shall comply with the restrictions in § __.14 of this part with respect to the assets in the representative sample;

(2) Shall not remove any assets from the representative sample; and

(3) Shall not cause or permit any assets in the representative sample to be included in any designated pool or representative sample established in connection with any other issuance of asset-backed securities.

(***f***~~g~~) Disclosures.

~~(1) Disclosure prior to sale.~~ A sponsor utilizing this section shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure with respect to the securitization transaction in written form under the caption "Credit Risk Retention":

(***1***~~i~~) The amount (expressed as a percentage of the designated pool and dollar amount) of assets included in the representative sample and to be retained (or retained) by the sponsor, and the amount (expressed as a percentage of the designated pool and dollar amount) of assets required to be included in the representative sample and retained by the sponsor pursuant to this section;

(***2***~~ii~~) A description of the material characteristics of the designated pool, including, but not limited to, the average unpaid principal balance of all the assets, the means of the ~~quantitative characteristics and the proportions of categorical characteristics~~ ***FICO scores, outstanding principal balance and remaining terms*** of the assets, appropriate

introductory and explanatory information to introduce the characteristics, the methodology used in determining or calculating the characteristics, and any terms or abbreviations used;

~~(iii) A description of the policies and procedures that the sponsor used for ensuring that the process for identifying the representative sample complies with paragraph (b)(2) of this section and that the representative sample has equivalent material characteristics as required by paragraph (b)(3) of this section;~~

~~(iv) Confirmation that an agreed upon procedures report was obtained pursuant to paragraph (d) of this section; and~~

~~(v) The material assumptions and methodology used in determining the aggregate dollar amount of ABS interests issued by the issuing entity in the securitization transaction, including those pertaining to any estimated cash flows and the discount rate used.~~

~~(2) Disclosure after sale. A sponsor utilizing this section shall provide, or cause to be provided, to the holders of the asset-backed securities issued as part of the securitization transaction and, upon request, provide, or cause to be provided, to the Commission and its appropriate Federal banking agency, if any, at the end of each distribution period, as specified in the governing documents for such asset-backed securities, a comparison of the performance of the pool of securitized assets included in the securitization transaction for the related distribution period with the performance of the assets in the representative sample for the related distribution period.~~

~~(3) Conforming disclosure of representative sample. A sponsor utilizing this section shall provide, or cause to be provided, to holders of the asset-backed securities issued as part of the securitization transaction and, upon request, provide to the Commission and its appropriate Federal banking agency, if any, disclosure concerning the assets in the representative sample in the same form, level, and manner as it provides, pursuant to rule or otherwise, concerning the securitized assets.~~

§ __.14 Hedging, transfer and financing prohibitions. . . .

(f) Permissible Transactions. Nothing in this Section __.14 prohibits a retaining sponsor from taking any actions with respect to any ABS interests or other assets, including ABS interests or other assets that it previously retained to comply with subpart B of this part with respect to a securitization transaction, if following such actions the sponsor will continue to retain ABS interests and/or assets pursuant to subpart B of this part in respect of the related securitization that are not subject to hedging arrangements prohibited by clause (b) or clause (c) or non-recourse financing prohibited by clause (e) and are in an aggregate amount that is at least equal to 5% of the par value of all outstanding ABS interests issued by the related issuing entity in the related securitization transaction.

§ __.16 Definitions applicable to qualifying commercial mortgages, commercial loans and auto loans.

. . .

Automobile Loan:

(1) Means any loan to an individual to finance the purchase of, and is secured by a first lien on, a passenger car or other passenger vehicle, such as a minivan, van, sport-utility vehicle, ***motorcycle***, pickup truck, or similar light truck ~~for personal, family, or household use~~; or

(2) Does not include any:

(i) Loan to finance fleet sales;

(ii) Personal cash loan secured by a previously purchased automobile; or

(iii) Loan to finance the purchase of ~~a commercial vehicle or~~ farm equipment that is not used for personal, family, or household purposes;

(iv) Lease financing; or

(v) Loan to finance the purchase of a vehicle with a salvage title.

LTV Ratio means, at the time of origination of an automobile loan, (1) the original amount financed under the automobile loan divided by (2) either (A) for a new vehicle, the manufacturer dealer invoice price or the manufacturer's suggested retail price for the related motor vehicle or (B) for a used vehicle, the value set forth in a standard industry guide for used vehicles (or if no value is available in a standard industry guide, the manufacturer dealer invoice price or the manufacturer's suggested retail price) for the related motor vehicle; provided that the sponsor may elect to deduct the amount financed under the automobile loan for "add-on" products, such as extended warranties, service contracts or insurance, from clause (1) of this definition so long as it shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, disclosure in written form under the caption "Credit Risk Retention" describing the amounts deducted in reliance on this proviso.

[The definitions of "Debt to income (DTI) ratio", "purchase price", "trade-in-allowance" and clause (1) of "total debt" may be deleted as they are no longer used with the below revisions to § __.20]

§ __.17 Exceptions for qualifying commercial loans, commercial mortgages, and auto loans.

The risk retention requirements in subpart B of this part shall not apply to securitization transactions that satisfy the standards provided in §§ __.18, __.19, or __.20 of this part; ***provided, that if less than 100% of the asset pool supporting a securitization is comprised of assets that satisfy the standards provided in Section __.20, then the risk retention requirements in subpart B of this part shall apply to that securitization transaction but the economic interest in the credit risk of the securitized assets in accordance with any one of Section __.4 through __.8 will equal five percent multiplied by a fraction, the numerator of which is the aggregate principal balance as of the cutoff date for the securitization of those assets in the related asset pool that do not satisfy the standards provided in Section __.20(b) and the denominator of which is the aggregate principal balance as of the cutoff date for the securitization of the entire asset pool.***

§ __.20 Underwriting standards for qualifying auto loans

(a) General. The securitization transaction is collateralized ~~solely (excluding cash and cash equivalents)~~ ***in whole or in part*** by one or more automobile loans, each of which meets all of the requirements of paragraph (b) of this section.

(b) Underwriting, product and other standards.

(1) ~~Prior to origination of the automobile loan~~, ***Within 30 days of making a credit decision on the automobile loan,*** the originator ***obtains an electronic or hard copy of***

~~(i) Verified and documented that within 30 days of the date of origination:~~

~~(A) The borrower was not currently 30 days or more past due, in whole or in part, on any debt obligation;~~

~~(B) Within the previous twenty-four (24) months, the borrower has not been 60 days or more past due, in whole or in part, on any debt obligation;~~

~~(C) Within the previous thirty-six (36) months, the borrower has not:~~

~~(1) Been a debtor in a proceeding commenced under Chapter 7 (Liquidation), Chapter 11 (Reorganization), Chapter 12 (Family Farmer or Family Fisherman plan), or Chapter 13 (Individual Debt Adjustment) of the U.S. Bankruptcy Code; or~~

~~(2) Been the subject of any Federal or State judicial judgment for the collection of any unpaid debt;~~

~~(D) Within the previous thirty-six (36) months, no one-to-four family property owned by the borrower has been the subject of any foreclosure, deed in lieu of foreclosure, or short sale; or~~

~~(E) Within the previous thirty-six (36) months, the borrower has not had any personal property repossessed;~~

~~(ii) Determined and documented that, upon the origination of the loan, the borrower's DTI ratio is less than or equal to thirty-six (36) percent.~~

~~(A) For the purpose of making the determination under paragraph (b)(1)(ii) of this section, the originator must:~~

~~(1) Verify and document all income of the borrower that the originator includes in the borrower's effective monthly income (using payroll stubs, tax returns, profit and loss statements, or other similar documentation); and~~

~~(2) On or after the date of the borrower's written application and prior to origination, obtain~~ a credit report regarding the borrower from a consumer reporting agency that compiles and maintain files on consumers on a nationwide basis (within the meaning of 15 U.S.C. 1681a(p)) and ~~verify that all outstanding debts reported in the borrower's credit report are incorporated into the calculation of the borrower's DTI ratio under paragraph (b)(1)(ii) of this section~~ ***confirms that (A) if the borrower has a FICO score of at least 680 but less than 700, then the automobile loan has an LTV Ratio of no greater than 105%, (B) if the borrower has a FICO score of at least 700 but less than 725, then the automobile loan has an LTV Ratio of no greater than 110%, (C) if the borrower has a FICO score of at least 725 but less than 740, then the automobile loan has an LTV Ratio of no greater than 120% or (D) if the borrower has a FICO score of 740 or greater, then the automobile loan has an LTV Ratio of no greater than 135%;***

~~(2) An originator will be deemed to have met the requirements of paragraph (b)(1)(i) of this section if:~~

~~(i) The originator, no more than 90 days before the closing of the loan, obtains a credit report regarding the borrower from at least two consumer reporting agencies that compile and maintain~~

~~files on consumers on a nationwide basis (within the meaning of 15 U.S.C. 1681a(p));~~

~~(ii) Based on the information in such credit reports, the borrower meets all of the requirements of paragraph (b)(1)(i) of this section, and no information in a credit report subsequently obtained by the originator before the closing of the mortgage transaction contains contrary information; and~~

~~(iii) The originator obtains electronic or hard copies of such credit reports.~~

~~(3) At closing of the automobile loan, the borrower makes a down payment from the borrower's personal funds and trade-in allowance, if any, that is at least equal to the sum of:~~

~~(i) The full cost of the vehicle title, tax, and registration fees;~~

~~(ii) Any dealer-imposed fees; and~~

~~(iii) 20 percent of the vehicle purchase price.~~

(*2*4) ***If the certificate of title for the vehicle is issued in a physical, as opposed to electronic, form, the*** ~~The~~ transaction documents require ***that such certificate of title is held by or on behalf of the servicer of the automobile loan, its affiliate or an agent thereof, if allowed or required by applicable law,*** ~~the originator, subsequent holder of the loan, or an agent of the originator or subsequent holder of the loan to maintain physical possession of the title for the vehicle~~ until the loan is repaid in full and the borrower has otherwise satisfied all obligations under the terms of the ***contract*** ~~loan agreement~~.

(*3*~~5~~) If the ***automobile*** loan is for a new vehicle, the terms of the ***contract*** ~~loan agreement~~ provide a maturity date for the ***automobile*** loan that does not exceed ~~5 years from the date of origination~~ ***72 months from the contract date of the automobile loan***.

(*4*~~6~~) If the ***automobile*** loan is for a ***used*** vehicle***, the terms of the contract provide a maturity date for the automobile loan that is (i) no more than 72 months from the contract date of the automobile loan, if the used vehicle is up to or including 4 years old as of the contract date; (ii) no more than 60 months from the contract date of the automobile loan, if the used vehicle is 5 years old as of the contract date; or (iii) no more than 48 months from the contract date of the automobile loan, if the used vehicle is 6***

years old as of the contract date; ~~other than a new vehicle, the term of the loan (as set forth in the loan agreement) plus the difference between the current model year and the vehicle's model year does not exceed 5 years~~**,** .

(*5*~~7~~) The terms of the loan agreement:

(i) Specify a fixed rate of interest for the life of the loan;

(ii) Provide for a ***level*** monthly payment amount that ***amortizes the amount financed over the term of the automobile loan***;

~~(A) Is based on straight-line amortization of principal and interest over the term of the loan; and~~

~~(B)~~ ***(iii)*** Do not permit the borrower to defer repayment of principal or payment of interest; and

~~(C)~~ ***(iv)*** Require the borrower to make the first payment on the automobile loan within 45 days of the ***contract*** date of ~~origination~~ ***the automobile loan***.

(*6*~~8~~) At the ~~closing of~~ ***cutoff date for*** the securitization transaction, ~~all payments due on the loan are contractually current~~ ***no payment is more than 30 days delinquent (as defined by the servicer's collection policies) and the closing date of the securitization transaction is within 60 days of the cutoff date***; and

(7) As of the cutoff date for the securitization transaction, no payment has been extended on the automobile loan.

~~(9) (i) The depositor of the asset-backed security certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all assets that collateralize the asset-backed security meet all of the requirements set forth in paragraphs (b)(1) through (b)(8) of this section and has concluded that its internal supervisory controls are effective;~~

~~(ii) The evaluation of the effectiveness of the depositor's internal supervisory controls referenced in paragraph (b)(9)(i) of this section shall be performed, for each issuance of an asset-backed security, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security; and~~

~~(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (b)(9)(i) of this section to~~

~~potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to its appropriate Federal banking agency, if any.~~

~~(c) Buy-back requirement. A sponsor that has relied on the exception provided in this paragraph (a) of this section with respect to a securitization transaction shall not lose such exception with respect to such transaction if, after the closing of the securitization transaction, it is determined that one or more of the automobile loans collateralizing the asset-backed securities did not meet all of the requirements set forth in paragraphs (b)(1) through (b)(8) of this section provided that:~~

~~(1) The depositor has complied with the certification requirement set forth in paragraph (b)(9) of this section;~~

~~(2) The sponsor repurchases the loan(s) from the issuing entity at a price at least equal to the remaining principal balance and accrued interest on the loan(s) no later than 90 days after the determination that the loans do not satisfy all of the requirements of paragraphs (b)(1) through (b)(8) of this section; and~~

~~(3) The sponsor promptly notifies, or causes to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is required to be repurchased by the sponsor pursuant to paragraph (c)(2) of this section, including the principal amount of such repurchased loan(s) and the cause for such repurchase.~~

§ __.24 Partial Exemption for Automobile Loan Securitizations.

(a) General. For a securitization transaction that is collateralized by a pool of automobile loans and which meets all of the requirements of paragraph (b) of this section at the closing of the securitization transaction, the sponsor shall be required to retain an economic interest in the credit risk of the securitized assets in accordance with any one of Section __.4 through __.8 in subpart B of this part equal to 2.5 percent of the par value of all ABS interests in the issuing entity issued as part of the securitization transaction.

(b) Pool Characteristics.

(1) (i) The pool of automobile loans has a weighted average FICO score of 700 or more but less than 725, (ii) the weighted average LTV Ratio of the pool of automobile loans is no greater than 110%, (iii) no more than 50% of the pool of automobile loans has an original loan term of more than 60 months and (iv) no automobile loans have an original term of more than 72 months, or

(2) (i) The pool of automobile loans has a weighted average FICO score of 725 or more but less than 740, (ii) the weighted average LTV Ratio of the pool of automobile loans is no greater than 120%, (iii) no more than 65% of the pool of automobile loans has an original loan term of more than 60 months and (iv) no more than 5% of the pool of automobile loans has an original loan term of more than 72 months , or

(3) (i) The pool of automobile loans has a weighted average FICO score of 740 or more, (ii) the weighted average LTV Ratio of the pool of automobile loans is no greater than 135%, (iii) no more than 80% of the pool of automobile loans has an original loan term of more than 60 months and (iv) no more than 10% of the pool of automobile loans has an original loan term of more than 72 months.

For the purposes of clauses (1)(i), (2)(i) and (3)(i), FICO scores are determined at origination and are calculated assuming that individual obligors without FICO scores have a FICO score of 300; and determining the weighted average by weighting each loan by its principal balance as of the related cutoff date. For the purposes of clauses (1)(ii), (2)(ii) and (3)(ii), the weighted average is determined by weighting each loan by its principal balance as of the related cutoff date. For the purposes of clauses (1)(iii), (2)(iii) and (3)(iii), the relevant percentage is calculated as the aggregate principal balance of all loans with original terms of greater than 60 months and dividing the result by the aggregate principal balance of all loans, all as of the related cutoff date. For the purposes of clauses (2)(iv) and (3)(iv), the relevant percentage is calculated as the aggregate principal balance of all loans with original terms of greater than 72 months and dividing the result by the aggregate principal balance of all loans, all as of the related cutoff date.

(c) <u>Disclosures</u>. A sponsor utilizing this section shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption "Credit Risk Retention":

> ***(1) A description of the methodology used by the sponsor to calculate LTV Ratios for the purposes of this § __.24; and***
>
> ***(2) Data of the type and in the manner required by Item 1111 of Regulation AB regarding the FICO Scores, LTV Ratios and original loan terms of the loans comprising the asset pool.***

ANNEX B

As discussed in the introductory section of this letter entitled "Background on Vehicle ABS Structures—Auto Loan Securitizations," when a sponsor assembles an asset pool for a securitization that includes a significant concentration of low APR loans, the sponsor will generally employ one of two methodologies that adjust for the presence of those loans. Each methodology will apply to all retail loans in the pool that have APRs below a discount rate that is specified for that pool. The discount rate is established at a level that equals the sum of the carrying costs of the securitization (servicing fees, other fees and interest payments on the ABS notes) and an incremental cushion intended to generate excess spread.

The more common approach is to calculate a "yield supplement overcollateralization amount," often referred to as YSOC, for each month during the scheduled life of the pool. The YSOC for a given month represents the aggregate of the difference between the scheduled principal balance for that month of each low APR loan and the value of that loan when discounted at the discount rate. YSOC is initially calculated as of the pool cutoff date; in some transactions, it is recomputed monthly to take prepayments into account, while in other transactions it is not thereafter recalculated. YSOC then is used to determine the required monthly principal payments on the ABS notes. All available collections (after application for higher priorities in the waterfall) must be applied to principal payments on the most senior outstanding class of ABS notes until the aggregate principal balance of the ABS notes equals the target overcollateralization amount, which is typically the sum of YSOC for that period and an additional amount.

The mechanics of YSOC are complex, and the foregoing explanation is intentionally brief. The point, though, is that YSOC is used to define a level of overcollateralization for the benefit of investors. YSOC constitutes a key element of the credit enhancement that absorbs the first losses on the pool. YSOC represents a significant portion of the subordinated residual interest retained by the depositor.

The second methodology employed to account for low APR loans in a pool is a "discounted pool balance" approach through which adjustments are made for low APR loans by discounting all low APR loans at a single discount rate. In this approach, the retail loans are rediscounted each month during the life of the securitization using the discount rate established at the outset. The result is an aggregate pool balance that is lower than the aggregate principal balance of the retail loans. This structure, too, employs a target overcollateralization amount, but it will be a much lower amount than the target overcollateralization amount in the YSOC structure.

Like YSOC, the discounted pool balance approach provides credit enhancement for the ABS notes. However, the effect of this approach is effectively to recharacterize a portion of the principal balance as "yield" on the retail loans. The portion of the overall pool balance represented by the low APR loans is reduced to the aggregate discounted value of the low APR loans, and the cash flows representing that incremental reduction effectively become "excess spread" in the securitization. Like YSOC, this credit enhancement absorbs the first losses on the overall pool. But, unlike YSOC, it is not measured against the scheduled principal balance of the overall pool.

The table below demonstrates the basic differences between the YSOC approach and the discounted pool balance approach for a hypothetical pool of retail loans. The numbers in this table have been inserted for illustrative purposes only and, while we believe they are directionally appropriate, do not represent actual calculations applied to an actual pool of retail loans. It is important to note that this table represents an oversimplification of more complex arrangements that would be typical in a retail loan securitization.

Feature	**YSOC Approach**	**Discounted Pool Balance Approach**
(a) Undiscounted Principal Balance of Pool	$1,000,000,000	$1,000,000,000
(b) Initial Yield Supplement Overcollateralization Amount	$ 70,000,000	n/a
(c) Discounted Principal Balance of Pool	n/a	$ 930,000,000
(d) Initial Pool Balance	$1,000,000,000	$ 930,000,000
(e) Target Overcollateralization Amount	YSOC + 1.0% of initial Pool Balance	1.0% of initial Pool Balance
(f) Principal balance of ABS notes	$ 930,000,000	$ 930,000,000
(g) Gross excess spread (after carrying costs, before losses)	2.5% of current Pool Balance	6.0% of current Pool Balance
(h) Initial overcollateralization [(d) -(f)]	$ 70,000,000	$ 0
(i) Present value of gross excess spread	$ 50,000,000	$ 120,000,000
(j) Total value of credit enhancement [(h) + (i)]	$ 120,000,000	$ 120,000,000

Both the YSOC methodology and the discounted pool balance methodology provide credit enhancement to investors, and both absorb first losses on the pool. Both should be entitled to be counted as part of an eligible horizontal residual interest, because they serve the same purpose even as they reach those results through different methodologies. The final risk retention rules should allow for these differences in methodology. Moreover, as this example illustrates, excess spread and overcollateralization can be interchangeable, and we encourage the Agencies to avoid seeking to draw distinctions between the two forms.