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July 25th 2011

Department of the Treasury
Office of the Comptroller of the Currency
Docket Number OCC-2010-0002

Board of Governors of the Federal Reserve System
Attn.: Alfred M. Pollard, General Counsel
Docket No. R-1411

Department of Housing and Urban Development
Regulations Division
Office of General Counsel Docket Number
FR – 5504-P-01

Securities and Exchange Commission
Attn.: Elizabeth M. Murphy, Secretary
File Number S7-14-11

Federal Housing Finance Agency
Attn.: Jennifer J. Johnson, Secretary
RIN 2590-AA43

Federal Deposit Insurance Corporation
Attn.: Comments, Robert E. Feldman,
Executive Secretary
RIN 3064-AD74

Dear Ladies and Gentlemen:

RE: **CREDIT RISK RETENTION PROPOSED RULE**

This letter is submitted by the Australian Securitisation Forum (the "**AuSF**") in response to the Credit Risk Retention Proposed Rule in Release No. 34-64148, File No. S7-14-11 (the "**Proposed Rule**"), released jointly by the Office of the Comptroller of the Currency (Department of Treasury), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the U.S. Securities and Exchange Commission ("**SEC**"), the Federal Housing Finance Agency and the Department of Housing and Urban Development (collectively, the "**Agencies**"). The Proposed Rule seeks to give effect to the Agencies' mandate in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "**Dodd-Frank Act**") to adopt rules for risk retention in transactions involving asset-backed securities.[1]

Formed in 1989, the AuSF is the industry body representing Australian securitisation market participants. The AuSF's members act as issuers, dealers, investors, servicers, trustees, auditors and professional advisors working on securitisation transactions.

The comments expressed in this letter represent the views of the members of a subcommittee of the AuSF, who have been chosen to review the Proposed Rule and determine the possible effects of the Proposed Rule on Australian issuers issuing residential mortgage-backed securities ("**RMBS**") and other asset-backed securities ("**ABS**") in United States markets. We have also received advice from our outside United States counsel, Mayer Brown LLP. In this letter, we have limited our comments to those issues that we believe would have a unique and negative impact on Australian RMBS and ABS, noting that the AuSF otherwise commends the Agencies for taking a leading role in relation to the review of, and proposed improvements to, the US securitisation market. We are also grateful to the Agencies for providing us with an opportunity to share our thoughts and concerns regarding the Proposed Rule. The AuSF fully supports appropriate regulatory and industry reform that is designed to improve investor protection and to promote more efficient RMBS and ABS markets.

To that end, the AuSF suggests several modifications to the Proposed Rule in order to avoid negative effects on Australian RMBS and ABS.

[1] Terms that have been defined in the Proposed Rule or the Dodd-Frank Act are used in this letter with the same meanings, unless otherwise specified.

In particular, AuSF believes that the following modifications and clarifications are necessary:

a) Empower a specified Agency, perhaps the SEC, to exempt, on a case-by-case basis, all sponsors located in a foreign country or individual foreign securitisation sponsors from all or certain requirements of the Proposed Rule and/or to permit sponsors in such a foreign country to meet the requirements of the Proposed Rule in an adjusted manner to reflect the unique aspects of a local market and its current regulations (in each case, with such exemptions or adjustments being made on an asset class or general basis, as appropriate);

b) Permit the continued use of risk retention and resulting alignment of interests that is currently employed in nearly every Australian RMBS and ABS transaction with respect to horizontal exposure; and

c) Allow the continued use of Australian RMBS and ABS transaction structures that are common in securitisations of Australian consumer loans and receivables and that may be prohibited by provisions of the Proposed Rule.

COMMENTS ON THE PROPOSED RULE

1. Cross-border Mutual Recognition

The Proposed Rule would require foreign RMBS and ABS sponsors issuing securities in the United States securitisation market to comply with the Proposed Rule, unless the narrowly tailored safe harbor for certain foreign-related transactions applies. While the AuSF recognizes the necessity for reform and enhanced regulation in the United States market, the Proposed Rule should be modified to provide authority for a specified Agency, perhaps the SEC, to grant case-by-case exemptions from some or all of the Proposed Rule's requirements to all RMBS and ABS sponsors in a foreign country or to individual foreign RMBS and ABS sponsors. In the alternative, the specified Agency should be granted authority to permit foreign RMBS and ABS sponsors to meet the requirements of the Proposed Rule in an adjusted manner to reflect unique aspects of their local market and current regulations adopted in such country (in each case, with exemptions or adjustments made on an asset class or general basis, as appropriate). Such an exemption, which we refer to as a "**Jurisdictional Exemption**", is necessary for the following reasons:

- First, the Proposed Rule is primarily and appropriately focused on sponsors and financial assets located in the United States, and several provisions of the Proposed Rule may be inappropriate to transactions involving foreign RMBS and ABS sponsors and foreign financial assets;

- Second, the QRM definition and the rules that exempt securitisations comprised of certain assets from risk retention requirements were established with the United States market in mind and do not reflect differences in certain foreign jurisdictions;

- Third, on comity grounds, the Proposed Rule should accommodate current regulations and appropriate reform proposals of foreign jurisdictions, enacted by local regulators who understand their local markets. Placing the SEC or another Agency in a position of authority to review and approve any proposed Jurisdiction Exemption would address concerns about automatic exemptions for jurisdictions that meet certain pre-established criteria; and

- Fourth, without the benefit of a Jurisdictional Exemption, foreign RMBS and ABS sponsors would be faced with a lowest common denominator problem. Issuing RMBS and ABS in the United States would require them to comply with the most restrictive aspects of their own current regulations and regulatory reform proposals as well as the provisions of the Proposed Rule. The result could add additional cost and burden to issuing RMBS and ABS in the United States, without a corresponding benefit of increased investor protection. These costs may either drive foreign RMBS and ABS offerings away from the US markets or economically incentivize the sponsors of these offerings to securitize only high risk assets, whose yields may justify increased compliance costs, in the US markets.

First, as summarized above, the Proposed Rule is primarily and appropriately focused on the securitisation of financial assets originated in the United States by US-based sponsors. While recognizing the importance to the US market of the new regulations the Agencies are developing, the AuSF believes a designated Agency should be granted the authority to defer, where appropriate, to foreign regulators (and practices) in foreign jurisdictions. It will be nearly impossible to resolve regulatory concerns for every conceivable foreign jurisdiction through the Proposed Rule, and even if such a course were possible, it would severely limit flexibility as new foreign jurisdictions become involved in securitisation. The idea of creating flexibility in the rule is already contemplated in § __.23, which allows the Agencies to modify the Proposed Rule to grant total or partial exemptions of any securitisation transactions that the Agencies determine is appropriate in the public interest and for the protection of investors. The Jurisdictional Exemption would put this authority in the hands of a single Agency, such as the SEC, and it would expressly provide that an exemption would be granted if the designated Agency concludes that the risk retention protections applicable as a matter of local law are consistent with the public interest behind the Proposed Rule such that they would adequately protect US investors.

In our view, the SEC is the Agency best suited to make a determination with respect to granting a Jurisdictional Exemption because it already has a well-developed understanding of foreign securitisation transactions. For example, the SEC has reviewed a significant number of registration statements filed by Australian RMBS issuers that have publicly issued RMBS in the past. For this reason, we believe that the SEC should be granted this authority as contemplated by § __.23.

Second, the QRM definition and other aspects of the Proposed Rule are specifically drafted for the United States market. As a result, its requirements are driven by United States concepts that are incompatible with Australian RMBS and ABS. As a specific example, the definition of QRM and provisions in the Additional QRM Standards Appendix reference IRS Forms and social security income as benchmarks, which is inapplicable to foreign borrowers. It is also clear that the statistical analysis conducted in drafting the QRM definition used US mortgage loan data and not mortgage loan data from other foreign countries.

Third, from a comity perspective, the Agencies should give effect and due deference to the decisions of local regulators better suited to understand their local assets. A Jurisdictional Exemption would demonstrate an understanding and appreciation of the differences between regulatory regimes in the United States and other countries. It would also acknowledge that some of those regulatory differences may appear facially disparate while nevertheless being designed to accomplish the same objectives in substance and spirit. Prohibiting the Proposed Rule from reflecting these differences when they are consistent with its substance and spirit has the effect of creating a non-meaningful and non-substantive barrier to entry to the US capital markets for foreign sponsors of RMBS and ABS. This approach would be inconsistent with the experience of the members of the AuSF to date, who have generally enjoyed a very receptive and accommodating relationship with US regulators, including the SEC. For example, the SEC has allowed foreign issuers, including members of the AuSF, to confidentially pre-file their registration statements for RMBS to be publicly offered in the United States (which is an accommodation not extended to US filers). The SEC has also been accommodating with respect to compliance by foreign issuers, including members of the AuSF, with the technical provisions of Regulation AB when requirements of the rule are impossible to satisfy for financial assets originated in another jurisdiction. For example, Regulation AB requires the disclosure of FICO scores, but the SEC has been willing to waive this requirement for the securitisation of Australian mortgage loans because FICO scores are not available for Australian consumers. This experience illustrates why a Jurisdictional Exemption should not be based exclusively on preset principles, as advocated by other comment letters. We think any attempt to craft a Jurisdictional

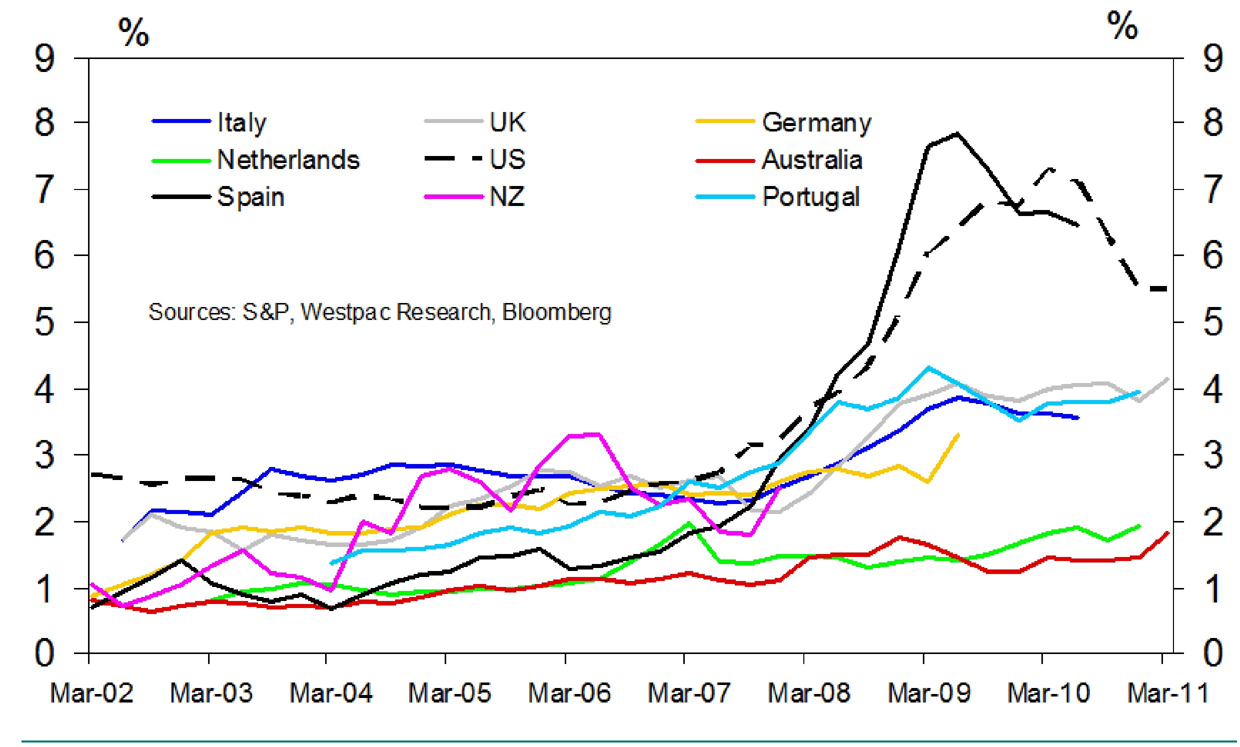
Exemption definition will be inherently flawed and will fail to appreciate the nuances of each local market and its regulatory regime. In some cases, for example, the nature of the underlying collateral alone will be enough to extend a Jurisdictional Exemption, similar to the QRM rules in the Proposed Rule, without regard to whether RMBS and ABS issued to fund that collateral are offered and sold in a particular jurisdiction or retained in any particular amount.

Fourth, many foreign jurisdictions have effectively regulated RMBS and ABS and the assets that support these securities, and further regulation by the Proposed Rule would create an additional compliance burden without a corresponding benefit. For example, to date, Australians have proven successful in regulating the ABS and RMBS industries. The largest asset class in the Australian securitisation market is RMBS. This asset class also has typically been the most common type of asset-backed security registered under the Securities Act for offering to United States investors. Australian RMBS transactions have performed well in comparison to other global securitisation markets. This fact is illustrated by the charts below, which compare levels of arrears for prime mortgages on a country-by-country basis. The charts show that arrears levels in Australia have continuously been low in comparison with the United States and Western Europe and that they did not exhibit anything like the spike experienced in the United States and Western Europe over the past three years. The central bank in Australia, The Reserve Bank of Australia, recently remarked:

> "*…in many countries the marked expansion in housing credit went on to cause severe financial difficulties. Here in Australia, however, this has not happened; in particular, household loan arrears remain relatively low. Contributing to this better outcome in Australia was the fact that the deterioration in lending standards was not as severe or as widespread as in some other countries. Also, household incomes have continued to grow*

solidly, in the context of a strong economy and low unemployment. In the current environment, it is unlikely that households will have much enthusiasm for increasing indebtedness. The most likely scenario is that household borrowing will continue to grow at a relatively subdued rate for some time yet. From the Reserve Bank of Australia's perspective, this would be a welcome development. It would allow the period of consolidation in household balance sheets to continue and would avoid households adding to pressures in the economy at a time when its productive capacity is already being stretched by the resources boom."[2]

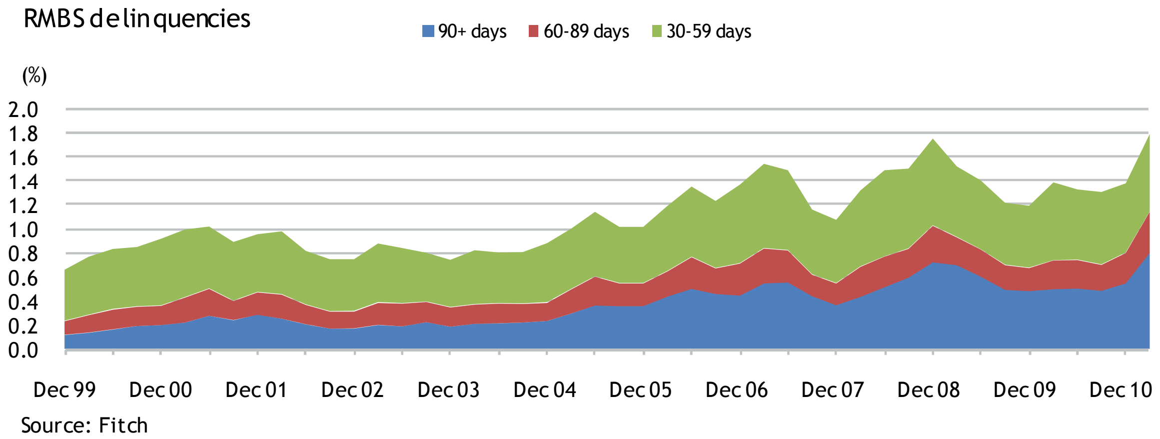
Figure 1 - selected international arrears levels



These historically-low and, by comparison, internationally-low, arrears rates do not cease to carry through to low actual delinquencies, as illustrated in Figure 2 - Fitch *Dinkum Index* below.

[2] *Bulletin* June Quarter 2011, Reserve Bank of Australia

Figure 2 - Fitch *Dinkum Index*



As evidenced by the above charts, the Australian regulatory environment proved resilient and effective in regulating its securitisation markets through the broader credit regulatory environment.

The Australian housing loan market has characteristics that set it apart from the US housing loan market and contribute to its solid credit performance. First, all Australian housing loans are full recourse loans. Indeed, unlike the majority of housing loans in the US, if a borrower defaults on their home loan (or any other form of consumer financing), the borrower remains liable for the full amount of that loan, even if there are insufficient proceeds obtained from the enforcement and sale of a borrower's home to repay the outstanding balance of the loan. The lender has the ability to bankrupt the borrower in order to recoup this residual amount which significantly reduces borrower speculation and strategic defaults. Second, Australian housing loans are not tax deductible, which encourages the borrower's rapid repayment of such housing loan resulting in home equity creation. Third, the Australian housing loan market did not experience the "originate-to-distribute" phenomenon that encouraged imprudent mortgage originations in the US housing loan market, the consequences of which led to many of the defaults in US RMBS securitisations. The sponsors of securitisations of Australian housing loans are affiliated with the entities that originate the loans. Finally note the Australian residential mortgage loan-to-value ratios at origination have traditionally been relatively low.[3] These factors have contributed to relatively low default rates in Australia and a tendency by Australian borrowers to make every effort to repay their housing loans. This objective, already accomplished in the Australian RMBS market, is the driving forces behind the QRM and other "qualified asset" exemptions from the risk retention requirements under the Proposed Rule.

Under the Jurisdictional Exemption approach, if the SEC determines that these current Australian regulations are adequate, then it should have the authority, as already contemplated by §__.23, to exempt securitisations of Australian mortgage loans and other consumer assets from the risk retention requirements of the Proposed Rule. Similarly, if the SEC believed that current regulations were not sufficiently aligned with the requirements of the Proposed Rule and refused to grant a Jurisdictional Exemption on that basis, the Proposed Rule should then allow reconsideration of the Jurisdictional Exemption request once new foreign risk retention rules were developed. Indeed, the Australian Securities Investment Commission has already undertaken an initiative to create risk retention requirements for Australian securitisations. Once finalized, these rules could form the basis for an extension of a Jurisdictional Exemption to the securitisation of Australian financial assets if a combination of the current regulatory requirements, the local market's current strict and effective underwriting standards, and, in the case of RMBS, the general full recourse nature of Australian mortgage loans are not already a sufficient basis for granting a Jurisdictional Exemption.

[3] In Australian RMBS transactions this year, the average weighted average current loan-to-value ratio of the underlying pool of loans has been 65.4%. This means that, on average, borrowers have approximately 34.6% of equity in each such Australian RMBS issuance. Also, on average, loans with current loan-to-value ratios of 80% or more have only made up approximately 17.2% of such issuances. *Sources: Presale Reports, Westpac ABS Strategy*.

Requiring foreign securitisation sponsors to comply with both their local rules and the Proposed Rule will have the consequence of pushing foreign sponsors away from the United States securitisation markets. This result would deprive US investors of high-quality investment opportunities where the creditworthiness of those investments would exceed the credit quality of US RMBS and ABS and would allow investors to better diversify their portfolios to protect against declines across asset classes due to the correlation between US asset performance and the US economy. Thus, the Proposed Rule should be modified to allow for foreign sponsors or foreign countries as a whole to apply for and receive a Jurisdictional Exemption, allowing them to continue to place ABS in the US securities markets without having to satisfy some or all of the requirements of the Proposed Rule.

The AuSF believes that granting this authority would allow the Agencies to account for the unique regulations and features in each foreign securitisation market and asset class while still ensuring that the U.S.-issued RMBS and ABS securitisations meet certain specified quality standards. Specifically, allowing the SEC to grant certain Australian securitisation sponsors, or Australia as a whole, cross-border mutual recognition would be appropriate as it would recognize local underwriting standards, the unique characteristics of Australian RMBS, and the legal and regulatory framework adequately governing Australian residential mortgage loans. For this reason, we request that the SEC be given the power to grant cross-border mutual recognition for foreign countries as a whole or specific foreign securitisation sponsors by including a Jurisdiction Exemption in the Proposed Rule. We further request the SEC to use the Jurisdiction Exemption to fully exempt Australian RMBS and ABS sponsors from the Proposed Rule for the reasons outlined above.

2. Revision of the Proposed Rule with Respect to Horizontal Exposure

The Proposed Rule allows for satisfaction of the risk retention requirement by (i) holding vertical exposures, (ii) either holding or cash-funding horizontal exposures, (iii) holding "L-shaped" exposures, (iv) holding a representative sampling of unsecuritized assets, or (v) for revolving master trust securitisations, holding a *pari passu* seller's interest. The AuSF is pleased with the various options available with respect to the risk retention requirement. However, if a Jurisdictional Exemption is not granted for all RMBS and ABS issued by Australian sponsors, we are concerned that the form of horizontal risk retention presently used almost universally in Australian RMBS and ABS transactions is arguably inconsistent with the horizontal risk retention requirements contemplated by the Proposed Rule. We propose clarification and, if necessary, revision of the horizontal exposure requirements of the Proposed Rule to clearly encompass the horizontal risk retention structures presently used by most Australian RMBS and ABS transactions.

As an initial matter, we would like to note that we have been following the US securitisation market's commentary on the Proposed Rule and agree with the comments regarding horizontal exposure provided by the American Bar Association Section of Business Law's Credit Risk Retention comment letter, filed July 20, 2011 (the "**ABA Comment Letter**"). Specifically, we agree with the ABA Comment Letter's discussion with respect to (1) the method of calculating par value when determining whether the retention of the first loss portion is sufficient to meet the risk retention requirements, (2) the formal allocation of losses requirement and (3) the "scheduled principal only" requirement. In addition to noting our general agreement, we would like to briefly address these issues as they relate to Australian RMBS and ABS.

In Australian RMBS and ABS securitisations, the sponsor or an affiliate[4] generally retains ownership of the bottom of the waterfall, or first-loss position, in the transaction by holding an interest that we refer to in this section as a "subordinated residual interest." A subordinated residual interest is an equity ownership or debt interest in an issuing entity that is subordinated to all other tranches of issued RMBS of the related series and that represents the right to receive cash flow at the most subordinated level of the waterfall. To the extent that, on any distribution date, all other issued RMBS and ABS 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 securitisation's credit enhancement[5] is at the levels that were agreed to at closing, the subordinated residual interest typically receives any excess payments generated by the asset pool. To the extent that the securitized mortgages perform poorly, the amount of excess payments is reduced, thus causing a corresponding reduction in the fair value of the subordinated residual interest.

To illustrate the strong alignment of interests between senior investors and holders of the residual interest, we have considered one example, as set forth in Figure 4 below.

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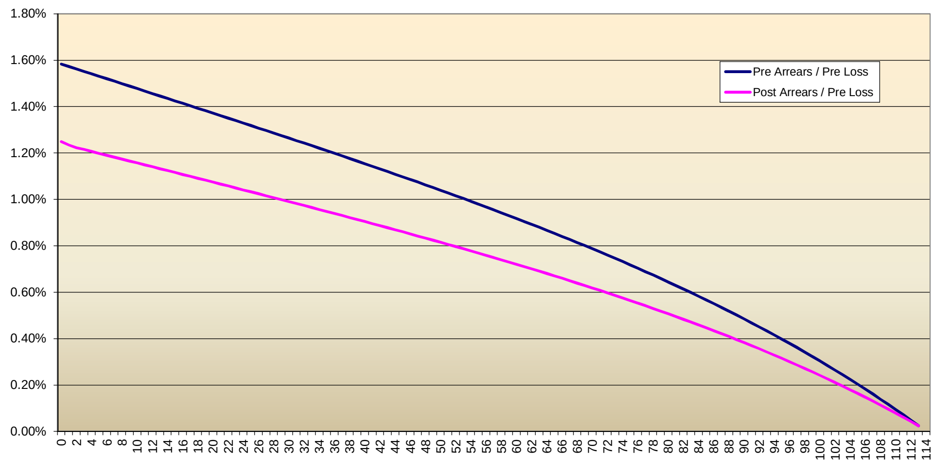
[4] In almost all Australian RMBS securitisations, the residual interests are held throughout the life of the transaction by a consolidated affiliate of the sponsor, typically the securitisation's "depositor." In many cases, this arrangement is necessary for the bankruptcy treatment of the securitisation that investors and rating agencies demand. Because transfers to such consolidated affiliates would be permitted at any time pursuant to the Proposed Rule, we believe that it would also be appropriate to ***modify the Proposed Rule so that any risk retention can <u>initially</u> be held by those consolidated affiliates as well***.

[5] In the Australian RMBS market, many transactions feature reserve accounts that are available to fund payments of certain principal and interest on the Australian RMBS and certain senior fees and expenses of the issuing entity and that are maintained at a specified balance with the securitisation's cash flow. Furthermore, transactions often feature overcollateralization that is maintained or increased over time by using excess interest collections on the pool assets to pay down the principal on the Australian RMBS more quickly than principal is collected on the pool assets.

Figure 3- Issuer Residual Income PV at each future payment period



Time in months (until clean-up call or maturity)

Source – *Macquarie Debt Markets Research*[6]

Thus, we agree with the comments in the ABA Comment Letter that the measurement of "par value" of horizontal exposures should take into account the fair value of the horizontal interest.

We also agree with the ABA Comment Letter "all losses" requirement, which provides that losses should be permitted to be allocated to the excess interest collections prior to being formally allocated to the horizontal exposure. As noted above, the value of the horizontal exposure is dependent on the value of the cash flows it receives. As a result, the use of excess interest to absorb credit losses effectively causes those losses to be borne by the holder of the horizontal exposure.

Finally, we agree with the ABA Comment Letter that the "scheduled principal payments" requirement should be modified so that the holder of the horizontal exposure can receive its

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[6] Assumptions used: average loan $250,000; average LVR 75%; default rate 40%; market value decline 30%; default cost $5,000; 30+ days arrears of 0.5%; full migration to 60+ days; full migration to 90+ days; migration to default at default rate else not arrears

share of all principal payments, not just scheduled principal payments. Restricting the holder of the horizontal exposure to its pro rata share of scheduled principal payments would result in the horizontal exposure growing in size relative to the other ABS interests, because those other ABS interests would be reduced by their respective shares of both principal prepayments and scheduled principal payments.

The strength of horizontal exposure requirements is a key reason that the Australian RMBS market is still strong today. Because the retention of a subordinated residual interest already provides a very strong alignment of interests between Australian RMBS sponsors and their investors, the AuSF is eager to see risk retention rules enacted that permit the continued use of this risk alignment that is currently employed even though as structured it would not satisfy all of the requirements for horizontal risk retention outlined in the Proposed Rule. Australian RMBS sponsors have used these forms of horizontal exposure in their securitisation transactions since 1995. Requiring them to modify their already sound and effective securitisation structures, particularly with respect to revolving master trusts that have been in place and were operating successfully for years, would impose a significant, if not impossible, burden for them to satisfy.

3. Other Technical Comments

There are three other aspects of the Proposed Rule that would create challenges for the structures that are currently used for the issuance of Australian RMBS and ABS. Specifically:

- Absent a Jurisdictional Exemption, the requirement that funds in a reserve account intended to satisfy the horizontal risk retention rules or the premium capture cash reserve account rules must be invested in US dollar-denominated assets would make these rules very difficult to satisfy to the extent that reserve accounts are utilized as part of a securitisation of Australian financial assets. These rules would introduce unnecessary currency risk into transactions. We think this risk is counterproductive and out of step with the principles of the Proposed Rule. We request permission to invest reserve account assets denominated in the local currency of the country in which the underlying securitized assets are originated or to match the currency of the underlying mortgage loans used as collateral.

- Master trusts are a structure in securitisations of Australian-originated consumer assets. We fully support the US securitisation market's commentary advocating the extension of the master trust option for risk retention to master trusts whose underlying assets that are expected to change in composition over time, as opposed to a single pool of revolving securitized assets. We see no reason for this distinction, and the principles of the Proposed Rule can be accomplished by the retention of a seller's interest in a master trust that is collateralized by such assets as mortgage loans and auto loans, which do not revolve in accordance with their terms.

- We are also concerned, as is the US securitisation market based on its commentary, about requirements that restrict a RMBS or ABS sponsor's ability to hedge its risk on the interests that it retains in a securitisation to satisfy the Proposed Rule. Specifically, in the context of Australian RMBS transactions, we are concerned that the presence of mortgage insurance, which in many cases insures the entire principal balance of each mortgage loan in the transaction, could be construed as a violation of the hedging prohibitions in Section ___.14 of the Proposed Rule. We do not think this is the best interpretation of Section ___.14 but believe that the Section should be clarified. Risk protection in the underlying transaction that benefits all classes of ABS, rather than just the retained interests, should not be considered a prohibited hedge on risk positions that are retained for purposes of complying with the Proposed Rule.

All of these points are made generally in the Cross Border Issues section of the American Securitization Forum comment letter on Credit Risk Retention. We are in full support of these points and positions as presented in that letter because they are particularly relevant for Australian securitisations, as illustrated above.

We trust that our comments are helpful to the Agencies. Given the importance of the Untied States market to our members, our outside United States counsel would like to meet with you in person and we would like to speak with you via video conference to discuss these matters in more detail and to respond to any questions. We look forward to your reply.

Respectfully submitted,

CHRIS DALTON
Chief Executive Officer