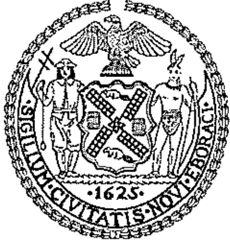

The City of New York
Office of Management and Budget
75 Park Place • New York, New York 10007-2146
Telephone: (212) 788-5900 • Fax: (212) 788-6300

Mark Page
Director

June 9, 2011

VIA EMAIL: regs.comments@occ.treas.gov

Department of the Treasury
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Re: Credit Risk Retention – Docket No. OCC 2010-002

VIA EMAIL: regs.comments@federal reserve.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Jennifer J. Johnson, Secretary
Re: Credit Risk Retention – Docket No. R-1411

VIA EMAIL: comments@FDIC.gov

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: Robert E. Feldman, Executive Secretary
Re: Credit Risk Retention – RIN 3064-AD74

VIA EMAIL: RegComments@fhfa.gov

Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
Attn: Alfred M. Pollard, General Counsel
Re: Credit Risk Retention – RIN 2590-AA43

VIA EMAIL: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Elizabeth M. Murphy, Secretary
Re: Credit Risk Retention – File Number S7-14-11

VIA WEBSITE: www.regulations.gov

Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500
Attn: Regulations Division, Office of General Counsel
Re: Credit Risk Retention – Docket No. FR-5504-P-01

Re: Proposed rules relating to credit risk retention pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act")

Ladies and Gentlemen:

The City of New York (the "City" or the "City of New York"), as sponsor of the tax lien-backed securities ("TLBS") described herein, submits this letter in response to the request for comments made by the Department of the Treasury, Office of the Comptroller of the Currency; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the Federal Housing Finance Agency; the Securities and Exchange Commission (the "SEC") and the Department of Housing and Urban Development (collectively, the "Agencies") relating to the implementation of Section 941(b) of the Act in connection with credit risk retention.

We appreciate the opportunity to provide comments on the proposed rules. We hope that our comments in this letter will be helpful to the Agencies.

Background

The New York State Constitution authorizes the City of New York to levy and collect taxes on real property for any public or municipal purpose. The City levies taxes and other special charges on real property pursuant to the provisions of the New York State Real Property Tax Law, the City Charter and the City Administrative Code. Under these laws, all real property taxes, assessments and sewer and water charges become liens on the day they become due and payable if unpaid. These taxes, assessments and charges, and any related tax liens, arise by operation of law and do not involve an extension of credit by any party or any underwriting decision on the part of the City. The liens securing unpaid property taxes, assessments and sewer and water charges are sold by the City through its tax lien securitization program described below. The City does not engage in a selection process; rather, virtually all qualified tax liens (with the limited exception described below) are securitized.

The City of New York has the right to sell unpaid tax liens, together with interest, penalties and costs of advertisement or notices of such sales. Applicable laws impose certain requirements on such sales, including that the taxes must equal or exceed a certain monetary threshold and be a certain number of months past due to be eligible for sale, and that multiple notices to property owners of each lien sale must be provided prior to sale.

Since 1996, the City has sold 16 pools of tax liens to special purpose entities, each a Delaware business trust created by the City (each, an "Issuer"), which issued securities to third-party investors in one or more classes backed by such tax liens. In the case of each such sale, many delinquent property owners paid their delinquent taxes after the notice of sale was given by the City and before the applicable sale date. As a result, the tax lien sale program is an exceedingly effective means of collecting delinquent taxes not only because of the receipt of the proceeds of the sale of the tax lien-backed bonds but also because of the acceleration of collections from property owners who voluntarily pay their delinquent taxes prior to the tax lien sale. In fact, the tax lien sale program is the City's primary means of enforcing the payment of delinquent property taxes and water and sewer charges. Property taxes constitute the single largest source of the City's revenues for its $65 billion expense budget. The ability to continue this program in an efficient and cost-effective way is crucial to the City's continuing fiscal stability.

In the City's tax lien securitization program, the structure of the securities is very simple. A single class of bonds or, in some transactions, a senior class of bonds and up to three subordinate classes of bonds are issued, all of which are rated investment grade. Credit enhancement is provided in the form of the overcollateralization provided by the residual interest in the pool and, if subordinate bonds are issued, by the subordinate bonds. No payments are made to the holder of a residual interest until the bonds are paid in full. If subordinate bonds are issued, then senior and subordinate bondholders receive their interest payments in order of priority, followed by principal payments due to them on a pro rata basis, unless the securities become undercollateralized due to losses. In that case, the senior bondholders receive the principal payments due them before the subordinate bondholders receive their principal payments. The City holds the residual interests in the pools of tax liens and receives net collections generated from the lien pools only after all bonds have been retired.

The securities in each series of the City's TLBS have been sold to an initial purchaser(s) in reliance on Section 4(2) of the Securities Act of 1933 (the "Securities Act") and immediately resold (and eligible for further resale) privately to "qualified institutional buyers" in reliance on Rule 144A under the Securities Act.[1]

The City respectfully submits that municipally-sponsored securitizations of tax liens do not fall within the scope of "asset-backed securities" as defined in Section 3(a)77 of the Securities Exchange Act of 1934 (the "Exchange Act" and such asset-backed securities, "Exchange Act ABS"), and therefore the proposed credit risk retention rules do not apply to such securitization transactions. In addition, the City believes that its tax lien securitization program does not pose the type of problems the credit risk retention rules are intended to address. Therefore, if the Agencies do not agree with the City's conclusion that the TLBS are not Exchange Act ABS, the City respectfully submits that a narrowly-tailored exemption from the credit risk retention rules for the City's TLBS is appropriate. For a more detailed discussion of the City's rationale for such an exemption, please refer to the City's letter of November 12, 2010 (the "November 12 Letter," attached hereto as Attachment I) in response to the requests for comments made by the SEC relating to the review of assets in offerings of asset-backed securities and the disclosure of fulfilled and unfulfilled repurchase requests in connection with alleged breaches of representations and warranties in asset-backed securities, and regarding the implementation of Section 621 of the Act in connection with conflicts of interest and Section 941 of the Act in connection with credit risk retention. Finally, if an exemption from the credit risk retention rules is not granted for the TLBS, the City respectfully requests that certain technical issues be addressed in order to facilitate the City's compliance with the rules.

I. TLBS do not fall within the scope of Exchange Act ABS.

As noted in the Agencies' proposing release, the credit risk retention rules would apply to Exchange Act ABS. An Exchange Act ABS is generally defined as "a fixed-income or other security collateralized by any type of self-liquidating financial asset...that allows the holder of the security to receive payments that depend primarily on cash flow from the asset."[2] The tax liens that are securitized in the City's tax lien securitization program are defined in Section 11-301 of the Administrative Code of the City of New

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[1] While the market views the City's TLBS as asset-backed securities, we note that the City's TLBS are not "asset-backed securities" under Regulation AB. The tax liens arise because property owners are delinquent in the payment of taxes and assessments and, as a consequence, tax liens do not satisfy the delinquency and non-performing standards codified in the Regulation AB definition of "asset-backed security."

[2] See Section 15 U.S.C. § 78c(a)(77).

York (the "Code"). Under the Code, "tax lien" is defined as "*the lien arising*...as a result of the nonpayment of taxes, assessments, sewer rents, sewer surcharges, water rents, ...interest and penalties thereon *and the right of the [C]ity to receive such amounts* (emphasis added)."[3] Since the tax liens comprise (1) a lien on real property and (2) the right to collect the delinquent taxes and related charges, rather than an asset that obligates the maker to pay in full in accordance with its terms, the tax liens do not satisfy the self-liquidating aspect of the definition of Exchange Act ABS. Consequently, the City believes that the credit risk retention rules do not apply to its securitization program.

II. The City's tax lien securitization program did not and does not pose the type of problems the credit risk retention rules are intended to address, and it represents the exercise of an essential governmental function.

The City of New York respectfully submits that municipally-sponsored securitizations of tax liens should be exempt from the proposed credit risk retention rules because such securitizations do not involve any of the bad business practices that the Agencies are seeking to reform. As noted in the "Background" section above, the tax liens arise by operation of law and do not involve an extension of credit or underwriting decision on the part of the City. Also, all qualified tax liens are sold for securitization except for liens that are not sold for housing policy reasons. As a result, application of the credit risk retention rules will not further the Agencies' stated goals of encouraging prudent underwriting standards and ensuring the quality of the assets underlying a securitization transaction.

Securitizing tax liens allows the City to collect delinquent taxes in as efficient a manner as possible, and provides an important source of much needed revenue. Collecting tax revenue is an essential governmental function. The application of the credit risk retention rules to the City's securitization program would impose a burden on the City without providing a benefit to investors.

For these reasons, if the Agencies disagree with the City's position that the TLBS are not Exchange Act ABS as described under Section I above, the City respectfully requests that the Agencies provide a narrowly tailored exemption from the credit risk retention rules for any tax lien-backed security sponsored by a municipality. The City respectfully submits that an appropriate definition of "tax lien-backed security sponsored by a municipality" for purposes of such an exemption is "a security sponsored by a municipal entity (i.e., under the proposing release, a State or Territory of the United States, the District of Columbia, any political subdivision of any State, Territory or the District of Columbia, or any public instrumentality of one or more States, Territories or the District of Columbia) backed by liens arising by operation of law of such municipal entity as a result of nonpayment of taxes, assessments, sewer rents, sewer surcharges, water rents, any other costs or charges that are made a lien subject to such law, any other charges that are due and payable, and the right of the municipal entity to receive such amounts."

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[3] Please refer to Attachment II for excerpts of the relevant provisions of the Code regarding the definition of tax liens and the grant of authority to the City of New York to sell tax liens, as well as excerpts from the Amended and Restated Purchase and Sale Agreement, dated July 1, 2010, between NYCTL 2010-A Trust (the issuer of the tax lien securitization) and the City of New York (the seller) with respect to the conveyance of the tax liens.

III. If the City is subject to the credit risk retention rules, certain implementing issues must be addressed in order for the City to comply with the risk retention rules.

A. Valuation of Retained Horizontal Residual Interest.

As noted above, in the City's tax lien securitization program, the City retains a residual interest in each pool of tax liens. The residual interest provides credit enhancement to the bondholders in the form of overcollateralization, and absorbs all losses on the tax liens in the securitization pool prior to the bonds. The City, as the holder of the residual interest, does not receive payments on the residual interest until the bonds have been paid in full. Based on these characteristics, the City believes that holding the residual interest satisfies the horizontal risk retention requirements set forth in the proposed rules. However, the rules are unclear as to how to determine the "amount" of a residual interest in order to assess whether it equals five percent of the par value of the ABS interests.[4] The residual interests do not have a par value, and determining market value is impracticable because there is no viable market for the residual interest.[5]

The City respectfully requests that, if the TLBS are subject to the risk retention rules, provision be built into the rules for an alternative method of valuation for a retained horizontal residual interest. The City believes that employing an "overcollateralization method" of valuation would be the most appropriate approach. The residual interest could be determined to have an amount equal to the excess of (i) the amount owed on the tax liens in the securitization pool at the time of the closing of the securitization transaction over (ii) the par value of the issued bonds. In the alternative, the City could employ the method it uses to value the residual interest for its financial statements, whereby it assesses the value of the tax liens by reference to the value of the properties securing the tax liens, adjusting for certain administrative expenses.

B. Accounting Treatment of Retained Horizontal Residual Interest Through Bankruptcy-Remote Subsidiary.

The City cannot hold the residual interests in the tax lien pools directly because of true sale considerations. Instead, the City holds these residual interests through a bankruptcy-remote subsidiary. The proposed rules allow a retaining sponsor to transfer its retained risk only to an entity "that is and remains a consolidated affiliate." The City cannot avail itself of this option because it is subject to accounting and financial reporting standards set by the Governmental Accounting Standards Board ("GASB"), which do not include the concept of consolidation. Instead, the entity holding the residual interests in the tax lien pools is a "component unit" of the City under GASB standards. The City is the owner of the entity that retains the residual interest, so the economic substance of the risk retention rules are satisfied and the policy objectives are still achieved. Therefore, in the event that the City must comply with the credit risk retention rules, the City respectfully requests that it be allowed to retain the

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[4] "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 [emphasis added]." <u>See</u> proposed rules at § __.5(a).

[5] Other common valuation methods, such as net present value, are difficult to apply because tax liens do not have a maturity date or scheduled payments. The only cash flows on the tax liens are from past due payments by property owners and liquidation proceeds, the timing of which is unpredictable. The inability to use the standard net present value valuation method for the tax liens illustrates the inappropriateness of subjecting these assets to the proposed risk retention rules.

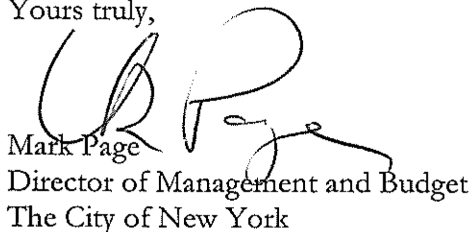
residual interest as it does in its current securitization transactions through a bankruptcy-remote subsidiary and to treat that entity as a component unit for financial reporting purposes.

Conclusion

The City of New York appreciates the opportunity to comment on the proposed credit risk retention rules. The City recognizes the important objectives the Agencies are addressing with the proposed rules. However, because the tax liens underlying the City's TLBS are not self-liquidating assets, the TLBS should not be considered Exchange Act ABS and thus the credit risk retention rules should not apply to these securitization transactions. Additionally, because tax liens arise by operation of law, do not involve the extension of credit to a borrower and do not entail any underwriting decision on the part of a municipality, municipal issuers of tax lien-backed securities should not be subject to rules meant to improve the quality of underwriting practices. Tax lien securitizations play a significant role in New York City's exercise of an essential government function, and the City hopes to be able to continue to do so in as efficient and cost-effective a manner as possible. The City would thus appreciate the Agencies' consideration of an exemption from the credit risk retention rules for the TLBS in the event the Agencies do not agree with the City's position that the TLBS are not Exchange Act ABS. If the Agencies determine that the City's tax lien securitizations are within the purview of the rules, the City would appreciate the Agencies' consideration of certain clarifications to ensure the City's ability to comply with the rules.

Please do not hesitate to contact Katharine I. Crost, Esq. of Orrick, Herrington & Sutcliffe LLP at (212) 506-5070 or Albert F. Moncure Jr., Esq., Chief, Municipal Finance Division, New York City Law Department at (212) 788-1160 should you have any questions or desire clarification concerning the matters addressed in this letter.

Yours truly,



Mark Page
Director of Management and Budget
The City of New York

ATTACHMENT I

The City of New York
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Mark Page
Director

November 12, 2010

VIA EMAIL: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Elizabeth M. Murphy, Secretary

Re: Implementing Rules relating to Risk Retention, Repurchase Requests, Due Diligence Disclosure and Conflicts of Interest in Asset-Backed Securities Offerings pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act")

Ladies and Gentlemen:

The City of New York (the "City" or the "City of New York"), as sponsor of the tax lien-backed securities ("TLBS") described herein, submits this letter in response to the request for comments made by the Securities and Exchange Commission (the "SEC") in Release Nos. 33-9150, 34-63091 dated October 13, 2010 (the "Due Diligence Proposing Release") relating to review of assets in offerings of asset-backed securities, the request for comments made by the SEC in Release Nos. 33-9148, 34-63029 dated October 4, 2010 (the "Repurchase Requests Proposing Release") relating to the disclosure of fulfilled and unfulfilled repurchase requests in connection with alleged breaches of representations and warranties in asset-backed securities offerings, and to express our views regarding the implementation of Section 621 of the Act in connection with conflicts of interest and Section 941 of the Act in connection with credit risk retention.

We commend the SEC for inviting comments both in response to and prior to proposing rules on these issues. We hope that our comments in both this letter and our letter of July 30, 2010 in response to the request for comments in Release Nos. 33-9117, 34-61858 dated May 3, 2010 provide useful insight as the SEC undertakes this important task.

Background

The New York State Constitution authorizes the City of New York to levy and collect taxes on real property for any public or municipal purpose. The City levies taxes and other special charges on real property pursuant to the provisions of the New York State Real Property Tax Law, the City

Charter and the City Administrative Code. Under these laws, all real property taxes, assessments and sewer and water charges become liens on the day they become due and payable if unpaid. These taxes, assessments and charges, and any related tax liens, arise by operation of law and do not involve an extension of credit by any party or any underwriting decision on the part of the City. The liens securing unpaid property taxes, assessments and sewer and water charges are sold by the City through its tax lien securitization program described below. The City does not engage in a selection process; rather, virtually all qualified tax liens (with the limited exception described below) are securitized.

The City of New York has the right to sell unpaid tax liens, together with interest, penalties and costs of advertisement or notices of such sales. Applicable laws impose certain requirements on such sales, including that the taxes must be in excess of $1,000 and a certain number of months past due to be eligible for sale, and that multiple notices to property owners of each lien sale must be provided prior to sale.

Since 1996, the City has sold 16 pools of tax liens to special purpose entities, each a Delaware business trust created by the City (each, an "Issuer"), which issued securities to third-party investors in one or more classes backed by such tax liens. In the case of each such sale, many delinquent property owners paid their delinquent taxes after the notice of sale was given by the City and before the applicable sale date. As a result, the tax lien sale program is an exceedingly effective means of collecting delinquent taxes not only because of the receipt of the proceeds of the sale of the tax lien-backed bonds but also because of the acceleration of collections from property owners who voluntarily pay their delinquent taxes prior to the tax lien sale. In fact, the tax lien sale program is the City's primary means of enforcing the payment of delinquent property taxes and water and sewer charges. Property taxes constitute the single largest source of the City's revenues. The ability to continue this program in an efficient and cost-effective way is crucial to the City's continuing fiscal stability.

In the City's tax lien securitization program, the structure of the securities is very simple. A single class of bonds or, in some transactions, a senior class of bonds and up to three subordinate classes of bonds are issued, all of which are rated investment grade. Credit enhancement is provided in the form of the overcollateralization provided by the residual interest in the pool and, if subordinate certificates are issued, by the subordinate certificates. No payments are made to the holder of a residual interest until the bonds are paid in full. If subordinate bonds are issued, then senior and subordinate bondholders receive their interest payments in order of priority, followed by principal payments due to them on a pro rata basis, unless the securities become undercollateralized due to losses. In that case, the senior certificateholders receive the principal payments due them before the subordinate certificateholders receive their principal payments. The City holds the residual interests in the pools of tax liens and receives net collections generated from the lien pools only after all bonds have been retired.[1]

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1 The City holds the residual interests in the pools of tax liens because retaining the residual cash flows from the tax liens has been the most fiscally efficient structure for the City. The amount of the residual interest is the amount of credit enhancement necessary to support the desired rating(s) on the bonds. The City's retention of these interests is in no way intended to achieve an alignment of incentives or ensure that only high quality assets are included in the pools. That amount has generally ranged from approximately 5% where subordinate investment grade bonds are issued to as much as 40% where only AAA-rated bonds are issued.

The securities in each series of the City's TLBS have been sold to an initial purchaser(s) in reliance on Section 4(2) of the Securities Act of 1933 (the "Securities Act") and immediately resold (and eligible for further resale) privately to "qualified institutional buyers" in reliance on Rule 144A under the Securities Act.2

I. Risk Retention Requirements

The City of New York respectfully submits that municipally-sponsored securitizations of tax liens should be exempt from regulations as to risk retention prescribed in accordance with Section 941 of the Act, because the concerns that these requirements are meant to address are not evident in such securitizations. In Section 941(e)(2) of the Act, Congress sets forth standards for the Federal banking agencies and the SEC to follow in adopting or issuing exemptions, exceptions, or adjustments to the risk retention rules, which are to "(A) help ensure high quality underwriting standards for the securitizers and originators of assets...; and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors." In the recommendations presented in the report prepared by the Board of Governors of the Federal Reserve System (the "Board") in October 2010, the Board states that "[b]y requiring that securitizers or originators retain a portion of the credit risk of securitized assets (unless the assets meet high quality underwriting standards), section 941 appears primarily aimed at reducing the potential incentive of an originator or securitizer to securitize poor quality assets."

As noted in the "Background" section above, the tax liens arise by operation of law and are not originated pursuant to the application of underwriting standards. In addition, virtually all qualified tax liens are sold, other than tax liens that the City of New York determines not to sell because of housing policy considerations. No other selection decisions are made. Accordingly, there is no need to build in incentives to ensure that high quality underwriting standards are upheld or that only high quality assets are chosen for the securitization pool. Imposing risk retention requirements on the City will not affect the characteristics of the tax liens that are securitized in any way, will not provide any benefit to investors, and will only increase the burden on the City.

The tax lien securitization program is a critical element of the City's exercise of an essential governmental function – to assess and collect taxes. Performing this function in the most efficient and cost-effective manner is in the public interest. Compliance with the proposed risk retention rules would substantially increase the City's burden of exercising this governmental function and reduce the revenues the City is able to realize from the program without providing offsetting benefits to investors.3

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2 While the market views the City's TLBS as asset-backed securities, we note that the City's TLBS do not meet the Act's definition of "asset-backed security" because tax liens, by their nature, are not self-liquidating assets. The tax liens arise because property owners are delinquent in the payment of taxes and assessmentsand, as a consequence, tax liens do not satisfy the delinquency and non-performing standards that the SEC applies to the concept of self-liquidating assets, as codified in the Regulation AB definition of "asset-backed security."

3 We note that Section 941 of the Act directs that the prescribed regulations specifically provide for "the full or partial exemption of any asset-backed security that is...exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(2) of that Act..." The City's securitization program could be structured in such

As noted above, the City historically has retained the residual interests in the trusts. If the SEC nonetheless determines to impose risk retention requirements on the City in its program, we respectfully request that such requirement be satisfied by a 5% first loss position.

II. Disclosure of Repurchase Requests

The City of New York respectfully submits that municipally-sponsored securitizations of tax liens should be exempt from Section 943 of the Act. Section 943 states that the aim of the requirement of a securitizer to disclose fulfilled and unfulfilled repurchase requests is to help investors "identify asset originators with clear underwriting deficiencies." As mentioned above, the tax liens arise by operation of law. No underwriting occurs, and no underwriting standards of any type are applied. Other than to exclude certain tax liens that the City may choose not to sell for housing policy reasons, the City makes no decisions as to which tax liens are included in the tax lien pool. Moreover, the City of New York is the only consistent issuer of tax lien securitizations. Thus, no comparison between issuers is possible.

While the City believes that an exemption to this regulation is appropriate because the issue that it is meant to address does not apply to the New York City tax lien securitization program, the City requests that, failing a full exemption from the regulation, it be required to disclose such information on an annual or quarterly, rather than monthly, basis. The offering documents and quarterly payment date statements provided to investors already include information as to the repurchase of tax liens due to breaches of representations and warranties. Payments on the TLBS are made quarterly, not monthly. Disclosure under Section 943 of the Act, if required, should be annual or should coincide with the timing of payments and other reporting to investors.

III. Due Diligence

The City of New York respectfully submits that the requirements set forth in Section 932(s)(4) of the Act, which require the issuer or underwriter of any asset-backed security to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter, should not be applied to municipally-sponsored tax lien securitization programs. We believe that the purpose of Section 932(a)(4) of the Act is to require an issuer or underwriter to disclose the assessment of a third party as to the conformity of the assets underlying a securitization to the underwriting criteria and characteristics disclosed. The City does not employ a third party to undertake this type of review. The City does, however, utilize the services of a third party to confirm whether the tax liens identified by the City, in fact, qualify for sale. In other words, the third party does not validate whether the information provided with respect to the characteristics of the tax liens is accurate and in conformance with underwriting criteria, but instead deems the information to be accurate and determines whether, based on this information, the tax liens qualify for sale under the applicable statute. Because only tax liens that this third party determines will qualify are included in the pool, disclosing the results would not provide any meaningful information

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a way that it falls under this exemption, but in the past has chosen not to do so for reasons of administrative convenience and cost reduction. While the City of New York TLBS do not comply with the technical requirements of Section 3(a)(2) of the Securities Act, the policy reasons for exempting asset-backed securities relying on Section 3(a)(2) from risk retention requirements apply equally to the City of New York TLBS.

to investors. In addition, the rejection of any tax lien that is determined not to qualify for sale does not indicate that the City has originated or chosen liens that do not meet underwriting standards or selection criteria, because there are no underwriting standards or selection criteria applicable to this type of asset. Although we believe that the type of third-party review that is undertaken in the City's tax lien securitization program arguably is not encompassed by the proposed rules, we are concerned that the description of third-party due diligence provider is overly broad and would potentially include such a review.

Similarly, the City of New York does not believe that accountants' agreed-upon procedures or attorneys' security interest opinions are meant to be treated as a third-party due diligence report for purposes of Section 932(s)(4) of the Act. For the New York City tax lien securitization program, accountants compare information in a tax lien data file provided by the City against documents provided by the City in support of the information in the data file. The accountants do not assess the accuracy or completeness of the information provided. The context of Section 932(s)(4) of the Act suggests that the third-party due diligence reports covered in this section are those that report on the accuracy of asset level information.

The costs of publicly disclosing the findings and conclusions of third-party due diligence reports would impose a significant financial burden on the City. In turn, as discussed above, this type of due diligence information is of little benefit to investors.

IV. Conflicts of Interest

The City of New York respectfully submits that municipally-sponsored tax lien securitization programs should be exempt from the rules promulgated pursuant to Section 621 of the Act. We believe that the overriding aim of Section 621 of the Act is to prohibit an entity in a position to do so from designing a security to fail so as to enter into another transaction that will benefit from such security's failure. The City, as a governmental entity, is not among the actors that this section is intended to regulate. As noted above, the City does not make any decision as to which tax liens are included in a securitization pool. The tax liens arise by operation of law, and other than tax liens excluded for housing policy reasons, virtually all qualified tax liens are securitized. Because of the nature of municipally-sponsored securitizations of tax liens, including that they do not entail a selection of assets based on credit quality, it would be virtually impossible for a municipal sponsor to design securities that would be more likely to fail.

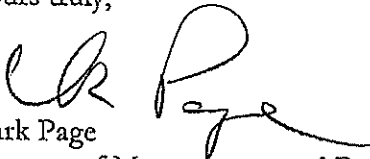
However, while the application of the rules promulgated under Section 621 of the Act to municipal entities would not further the intended aims, it could in fact have significant unintended and costly consequences. Many actions that the City of New York takes in the exercise of its governmental powers pursuant to other statutes or regulations or to serve the public's interest and protect the health and safety of its residents could potentially be viewed as being in conflict with the interests of investors in the tax lien-backed securities. For example, the City could take an action that would adversely impact the value of one of the properties securing a tax lien or the value of other properties in that area, which could adversely impact the value of that property. It would pose an undue burden on the City to be required to evaluate each such action to determine whether such a conflict might arise. In addition, any activity that might potentially be subject to the rules could then be frustrated, which would unduly restrict the City's exercise of its governmental powers with no offsetting benefit to investors. While crafting rules that clarify what the SEC considers to be a material conflict of interest may serve to address many of the City's concerns, we respectfully

request that the City nonetheless be exempted from the rules implementing Section 621 of the Act to eliminate all potential confusion and in light of the critical governmental function the TLBS program helps to achieve.

The City of New York appreciates the opportunity to comment on the implementation of the Act. Because tax liens arise by operation of law, do not involve the extension of credit to a borrower and do not entail any underwriting decision on the part of a municipality, municipal issuers of tax lien-backed securities should not be subject to rules meant to improve the quality of underwriting practices. Tax lien securitizations play a significant role in New York City's exercise of an essential government function, and the City hopes to be able to continue to do so in as efficient and cost-effective a manner as possible.

Please do not hesitate to contact Katharine I. Crost, Esq. of Orrick, Herrington & Sutcliffe LLP at (212) 506-5070 or Albert F. Moncure Jr., Esq., Chief, Municipal Finance Division, New York City Law Department at (212) 788-1160 should you have any questions or desire clarification concerning the matters addressed in this letter.

Yours truly,



Mark Page
Director of Management and Budget
The City of New York

ATTACHMENT II

Conveyance Language from Amended and Restated Purchase Agreement relating to the NYCTL 2010-A Trust (the "Purchase Agreement") [bold, italics added]:

"Section 2.01. Conveyance of Tax Liens. (a) In consideration of (i) the Issuer's promise to deliver on the Closing Date for the Schedule A Tax Liens to or upon the order of the Seller (1) the proceeds of the Bonds, in immediately available funds, net of (A) reserves, if any, funded with the proceeds thereof including the initial Pre-Funded Amount deposited into the Pre-Funding Account and (B) the costs of issuance of the Bonds or (2) the Schedule A Tax Lien Consideration and (ii) an increase in the value of the beneficial Ownership Interest in the Issuer in accordance with the Trust Agreement, the Seller does hereby sell, transfer, assign, set over and otherwise convey to the Issuer, without recourse (subject to the obligations herein), ***all right, title and interest of the Seller on the applicable Sale Date for the Schedule A Tax Liens, whether now owned or hereinafter acquired, in and to:***

(A) ***the Schedule A Tax Liens;***

(B) ***all payments representing Collections in respect of the Schedule A Tax Liens, to the extent such Collections have not previously been applied by the Seller to reduce the Tax Lien Principal Balance of the Schedule A Tax Liens prior to the applicable Sale Date for the Schedule A Tax Liens; and***

(C) ***the proceeds of any and all of the foregoing.***

Definition of "Schedule A Tax Liens" from the Purchase Agreement:

"'Schedule A Tax Liens': Any "tax lien" as defined in Section 11-301 of the City Admin. Code transferred to the Issuer on the applicable Sale Date…"

Definition of "tax liens" from Section 11-301 of the Code:

"The words "tax lien" when used in this chapter shall mean the lien arising pursuant to the provisions of this chapter or pursuant to the New York city municipal water finance authority act, …as a result of the nonpayment of taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter if the tax lien is sold, interest and penalties thereon and the right of the city to receive such amounts."

Authority to Sell Tax Liens, Section 11-319a of the Code:

"A tax lien or tax liens on a property or any component of the amount thereof may be sold by the city…"

Rights of Purchaser of Tax Lien, Section 11-332a of the Code:

"Any purchaser of a tax lien or tax liens shall stand in the same position as the city and shall have all the rights and remedies that the city would have had if the tax lien or tax liens had not been sold."