19 July 2011

Department of the Treasury
Office of the Comptroller of the Currency (OCC)
Docket No. OCC-2011-0002
By email: regs.comments@occ.treas.gov

Board of Governors of the Federal Reserve System
Docket No. R-1411
By email: regs.comments@federalreserve.gov

Federal Deposit Insurance Corporation
Docket No. 2011
RIN 3064-AD74
By email: Comments@FDIC.gov

Securities and Exchange Commission
File No. S7-14-11
By email: rule-comments@sec.gov

Federal Housing Finance Agency
RIN 2590-AA43
By email: RegComments@fhfa.gov

Department of Housing and Urban Development
FR-5504-P-01
By electronic submission: www.regulations.gov

Re: Credit risk retention – Response to the Agencies on the proposed rule OCC (Docket No. OCC-2011-0002) / FRB (Docket No. R-1411) / FDIC (RIN 3064-AD74) / SEC (File No. S7-14-11) / FHFA (RIN 2590-AA43) / HUD (FR-5504-P-01)

Dear Sirs

On behalf of the Association for Financial Markets in Europe (**AFME**), described in Annex I, we welcome the opportunity to comment on the proposed rule on credit risk retention (the **Proposed Rule**) put forward by the Office of the Comptroller of Currency, 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**) to implement the requirements of section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **Dodd-Frank Act**).

Our response focuses on the key considerations raised by the Proposed Rule from the perspective of European market participants, including those who may seek to fund securitisations of European assets by issuing asset-backed securities to U.S. persons. As such, the comments set out below relate primarily to matters which present particular challenges for European transactions. In particular, this response has been prepared by a working group of AFME members comprised primarily of issuers/originators, arrangers and legal advisers.

We wish to stress the global nature of the asset-backed market and the corresponding issues which would arise if the Agencies adopted rules which did not take account of the views of non-U.S. market participants. While the Proposed Rule is, understandably, primarily domestic in focus, it is essential in the interests of global comity to bear in mind that the maintenance and inter-relationship of free and open markets across borders should continue to benefit all issuers and investors, whether in the U.S. or elsewhere.

The proposed safe harbour for predominantly foreign transactions makes it clear that it is intended that the requirements would apply to European (and other non-U.S.) originated transactions to the extent that such transactions involve certain connections to the U.S., including a relevant offering of securities into the U.S. In particular, the proposed effective application of the retention requirements to non-U.S. sponsors in the context of transactions involving an offering where more than 10 per cent. of the dollar value by proceeds of the ABS interests in the transaction are sold to, or for the account or benefit of, U.S. persons, is potentially significant to a wide range of European issuers given that this would be likely to bring within scope transactions involving an offering conducted in reliance on Rule 144A, Regulation D or Section 4(2) of the Securities Act of 1933 (as amended). The importance of such offering regimes, which provide opportunities to European issuers to raise funds from U.S. investors, should not be underestimated.

Although it is difficult to provide precise figures as to the level of reliance on such regimes by European market participants given the private nature of the market, in the context of Rule 144A, industry estimates (calculations by AFME / ESF, based on Dealogic data) suggest that up to 25 per cent. of total issuance of European originated securitisations was offered in reliance on Rule 144A prior to the financial crisis. In addition, the Rule 144A regime has played an important role in the success of recent UK originated RMBS issues and, as such, has assisted in raising confidence levels in the market. AFME has recently polled several members who have issued term RMBS regularly into the U.S. market in reliance on Rule 144A over the last two years and it appears that the proportion of bonds placed with U.S. investors varies considerably between transactions: from as low as 4 per cent. through to 25 to 30 per cent. and, in some cases, in excess of 35 per cent. For other asset classes, such as credit cards, we have received feedback that U.S. placement levels may be higher.

Our issuer members would also like us to stress that, as a practical matter, it is difficult to forecast in advance, with any level of certainty, the proportion of a new issue that will be placed with U.S. investors (or indeed any particular investor base). This has always been the case, but is particularly true today given the increased volatility and smaller investor base that now exists for securitisation issues, post-crisis.

It should also be noted that a significant proportion of the ABCP which provides funding for EU originated assets is funded in the U.S. market. Again, an AFME member which sponsors a European conduit has informed us that, generally speaking, around two-thirds of its commercial paper is placed in the U.S. market.

The interaction of the requirements contemplated by the Proposed Rule with those which apply under the EU regime is a source of significant focus for AFME members. This is because the European authorities have already approved and adopted their own retention requirements, which are framed as an obligation on EU regulated banks as investors – meaning that they may apply regardless of the jurisdiction of deal origination. While we appreciate that certain considerations with respect to the interaction of the regimes may be most appropriately directed to EU authorities (and AFME members are pursuing this separately), this focus naturally shapes certain comments and concerns raised in this response.

It should also be noted that, notwithstanding the European focus of this response, our members have expressed concerns relating to certain more general matters referred to in the Proposed Rule. In this regard, our working group members (comprised primarily of issuers/originators, arrangers and legal advisers) support many of the general concerns raised by the originator, sponsor and dealer members of the Securities Industry and Financial Markets Association (**SIFMA**) in the response provided by SIFMA to the Proposed Rule, subject to the comments set out in this response.

We would be grateful for an opportunity to meet with you at your earliest convenience to discuss our response.

1. Executive summary

As a starting point, AFME supports the principles behind section 941(b) of the Dodd-Frank Act and the efforts of the Agencies to balance the corresponding considerations in the implementing measures set out in the Proposed Rule. Our members recognise that alignment of interests between sponsors and ABS investors has been identified as a key measure to address weaknesses in the securitisation process and segments of the asset-backed markets in both the U.S. and the EU. We fully support the ultimate aim of restoring confidence in the securitisation markets.

The need to avoid uncertainty and/or restrictions on cross-border market access

With the aim of restoring confidence in the securitisation markets in mind, we encourage the Agencies to ensure that the Proposed Rule does not give rise to uncertainty for market participants and/or operate effectively to restrict cross-border market access. We consider the preservation of the global nature of the ABS markets to be essential for all issuers and investors (U.S. and non-U.S. alike) and we would caution against the implementation of legislation targeted at addressing primarily U.S. domestic concerns (such as section 941(b) of the Dodd-Frank Act) in a manner which may disrupt this.

In our view, in the absence of cross-border coordination between the authorities on retention, the global liquidity of the ABS markets may be compromised. Moreover, the adoption of unclear provisions with respect to the scope of application, or of requirements which reflect and effectively accommodate only U.S. transaction parties, structures and/or assets, will result in significant compliance challenges and unlevel playing field issues for non-U.S. market participants.

The need for a formal mutual recognition process, with the EU and other qualifying regimes

Our response is shaped in part by the fact that the EU has already adopted its own retention regime. Our members therefore cannot ignore the issues which will arise from a cross-border perspective in circumstances where both regimes will apply. We strongly encourage the Agencies (and the EU authorities) to acknowledge these issues in order to avoid a potential situation where the U.S. market becomes effectively closed to certain non-U.S. originated ABS (and vice versa with respect to the EU regulated investor market).

In keeping with G20 calls for consistency, we encourage the Agencies (and the EU authorities) to work towards the introduction of a formal mutual recognition process with respect to risk retention. In this regard, we believe that provision should be made for recognition under the U.S. rules (i.e. for deemed compliance with such rules) of EU securitisations in circumstances where the relevant non-U.S.-located sponsor provides confirmation of its commitment to retain the required interest in compliance with the EU retention regime. We consider such relief to be necessary to avoid the significant compliance challenges and corresponding cross-border market access issues which would otherwise potentially arise. These are described in our response below.

We welcome the safe harbour concept, but request adjustment and clarification

We welcome in principle those sections of the Proposed Rule which are intended to clarify and establish certainty with respect to the application of the requirements in respect of foreign transactions – i.e. the safe harbour provisions. Notwithstanding this general support, we consider that certain aspects of the proposals should be clarified, specifically the condition which refers to the proposed 10 per cent. proceeds trigger for sales to U.S. persons. Indeed, if provision for formal recognition of suitably qualified retention regimes, including the EU regime, is not made (notwithstanding the case for this), we encourage the Agencies to consider providing enhanced flexibility for EU transactions which are compliant with the EU regime via the application of a higher proceeds trigger under the proposed safe harbour conditions. We would be happy to provide further detailed input on how such arrangements might be structured and we refer to these matters below.

We request further clarification on the scope of application of the rules to non-U.S. transactions

We would also welcome further clarification of certain matters with respect to the (widely cast) threshold application definitions referred to in the Proposed Rule. For example, confirmation that covered bonds (including structured covered bonds) are not caught by such definitions is desirable to remove any doubt in this regard given the significance of such products from a European bank funding perspective.

The need to take into account the features of European transactions, which may differ from those of U.S. transactions

Concerns have been raised with respect to specific requirements or concepts (including the holding options and corresponding conditions for availability) referred to in the Proposed Rule where the relevant items would not typically be relevant in an EU context and/or would not provide appropriate flexibility for EU equivalent arrangements and, as a result, may operate in a disproportionately onerous or restrictive manner for EU market participants. For example, the proposed investment restrictions with respect to reserve account arrangements give rise to potential issues. In addition, the proposed restriction of the seller share holding option to revolving asset master trusts would create significant compliance issues in the context of UK mortgage master trust arrangements.

2. Detailed comments

Our detailed comments with respect to the Proposed Rule are set out below.

(a) Case for formal coordination between authorities; need for recognition of EU regime

In general, we strongly favour a mutual recognition and acceptance process with respect to retention, in keeping with calls made by the G20 for regulatory coordination between authorities. Such a process is necessary to preserve the global nature of the ABS markets, to enhance global liquidity and to avoid distortions in competition. We believe provisions should be built into both the U.S. retention regime and the EU retention regime to permit mutual recognition and, as noted above, we are communicating our concerns on this point also to European authorities.

EU regime demonstrates key minimum features consistent with robust retention standard

We appreciate that the adoption of a recognition process for non-U.S. originated transactions would require a determination on the part of the U.S. authorities that the EU retention regime sets a sufficient retention standard for such transactions. However, we consider that this work is justified given the issues described below which may arise if such a recognition process is not adopted. Moreover, we consider that the EU regime demonstrates certain key minimum features consistent with a robust retention standard (certain of which overlap with the U.S. proposals). In particular, the EU regime is entrenched in legislation, refers to retention by the originator or sponsor in general and provides for a minimum retention level of 5 per cent. and a hedging restriction. Please see Annex II for a summary comparison of the EU requirements with the Proposed Rule. We would be happy to provide further details with respect to the EU regime if that would be helpful.

It is, of course, acknowledged that one difference between the two regimes is that the EU retention requirements (including the sanctions) do not apply directly to originators or sponsors but are rather framed as investor restrictions. However, originators and sponsors are caught indirectly as EU regulated investors may not invest unless the originator or sponsor retains the required interest. Furthermore, the general requirement for public disclosure of the commitment to retain the required interest provides transparency to investors (and the market in general) with respect to whether an originator or sponsor has in fact retained the required interest in respect of a relevant transaction. An originator or sponsor which discloses a commitment to retain and fails to do so faces significant consequences from a practical perspective – as it would presumably be extremely difficult for the relevant entity to access the market again and it may be liable to investors for misstatement and/or breach of any corresponding contractual provisions.

We acknowledge that a recognition process gives rise to certain potentially complex considerations and that work would be required to ensure that the adopted process operates as intended. We encourage the Agencies to undertake this work (together with the EU authorities as appropriate) in keeping with calls for international coordination. We would be pleased to assist in this regard if this would be helpful.

Suggested method to incorporate recognition of EU regime

Provision for recognition could be incorporated into the Proposed Rule for non-U.S. transactions in various ways. In particular, we consider that this could be sensibly achieved through amendments to the proposed foreign transactions safe harbour condition that refers to the proceeds trigger so that such condition refers to satisfaction of the selected proceeds trigger with respect to sales to U.S. persons *or* confirmation of the commitment of the relevant non-U.S./EU located sponsor to retain a net economic interest in compliance with the EU retention regime (being a regime which demonstrates certain key minimum features as outlined above). Changes would not be required with respect to the other proposed safe harbour conditions (e.g. the requirement that neither the sponsor nor the issuing entity is a U.S. located entity, that the transaction is not SEC registered, etc.).

Our suggested approach would effectively carve out from the Proposed Rule:

- predominantly foreign/EU transactions involving a U.S. offering resulting in placement with U.S. persons in an amount above the proceeds trigger threshold if the deal was compliant with the EU retention requirements; and
- predominantly foreign transactions not involving a U.S. offering (or involving a placement with U.S. persons in an amount not exceeding the proceeds trigger threshold).

We consider this to be an appropriate and sensible result as it would avoid the significant compliance challenges and corresponding cross-border market access issues (described in this response) which would otherwise potentially arise.

If the Agencies determine that it is not appropriate or feasible to provide for recognition as requested (notwithstanding the important reasons to pursue this), then we would encourage the Agencies to consider providing additional flexibility for EU securitisations (in circumstances where the relevant non-U.S.-located sponsor provides confirmation of its commitment to retain the required interest in compliance with the EU retention regime) via adjustments to the proceeds trigger safe harbour condition. In particular, we would suggest that such flexibility could be provided through the adjustment of the proposed proceeds trigger to refer to a higher level than that which would apply in the context of a non-U.S. deal which does not comply with the

EU retention regime. We believe that such higher level could be set at 33 per cent. While full recognition is our strongly preferred route, provision for adjustment of the proceeds trigger condition as described above may operate to preserve cross-border market liquidity in at least some circumstances.

Please see below for our further general comments on the proposed safe harbour and the corresponding conditions.

(b) Significant differences between the Proposed Rule and the EU retention regime; consequences of overlapping application

While a comparison of the EU retention requirements and the Proposed Rule reveals few points which directly conflict, the differences between the regimes are significant. These differences will affect the ability of EU market participants to practically comply with both regimes in the context of certain transactions. In the absence of mutual recognition or the provision of flexibility in the context of cross-border transactions, the lack of harmonisation between the regimes will present significant challenges for market participants.

We note that U.S. and EU market participants alike will be required to comply with both regimes in certain circumstances. For example, this would be relevant in the context of a U.S. originated deal where it is necessary or desirable to comply with the EU requirements to ensure that the relevant ABS may be held by an EU regulated bank (or its consolidated entities)[1] and, in the context of an EU originated deal which involves an offering into the U.S. (such as under Rule 144A), if such deal is also intended to be available for investment by relevant EU regulated entities (as would be the usual position).

Limited options for compliance with both regimes

In order to comply with both regimes, market participants would need to identify the common points between the two regimes and the more onerous compliance standard in each instance. Being limited to compliance via only those options and methods which work under both regimes, rather than just one regime, market participants will effectively be unable to rely on much of the flexibility provided under any one regime. The impact of this may be less pronounced in the context of traditional term securitisations, but is expected to be more problematic for transactions less suited to a classic or base case retention holding model such as ABCP programmes, managed CLOs, master trust transactions and certain CMBS transactions. We refer to the significant compliance issues which will arise in the context of these transactions below.

[1] Provision has been made for similar requirements to be implemented with respect to other EU regulated investors such as insurers, UCITS funds and certain hedge funds and private equity funds.

Specific example of resulting reduction in flexibility where both regimes apply

CMBS structures provide a specific example of a scenario where compliance with both regimes will effectively remove the ability to rely on the flexibility seemingly provided. While the Proposed Rule would permit, in certain circumstances, a B-piece buyer to retain the required interest using the horizontal interest holding option, this may not result in compliance with the EU retention regime, which requires the satisfaction of certain principles-based conditions if a party other than the originator or sponsor is to retain the required interest. To the extent that the conditions are not met, it would therefore not be possible for the B-piece buyer holding option to be used in circumstances where it was desirable to ensure that the deal could be held by relevant EU regulated investors. Similar issues may arise for EU originators seeking to rely on the EU guidance in the context of transactions involving a U.S. offering. As a result, the flexibility provided under the regimes would in practice not be available and cross-border market access would be effectively restricted.

To be clear, we are not suggesting that the flexibility contemplated by the Proposed Rule should be removed; we are instead making the point that the flexibility may not operate to provide the intended relief in a context where it is desirable to place the deal with relevant EU regulated investors, and consequently the EU retention regime also applies.

Application of additional restrictions may further restrict the ability of EU market participants to comply

It should also be noted that the introduction of further requirements and/or restrictions with respect to certain of the base case holding options may restrict the ability of EU market participants to use such options – which could further limit the ability of such entities to comply in practice. In this regard, we note that the consultation questions in the Proposed Rule seek feedback on whether a sponsor should be prohibited from utilising the horizontal risk retention option if the sponsor (or an affiliate) acts as servicer of the securitised assets. If the ability to use the horizontal interest holding option is restricted in this manner, this would make it extremely difficult for many EU market participants to use the horizontal risk retention option (and possibly other holding options which refer to the horizontal interest holding option), given the prevalence of sponsor serviced transactions in the EU market in general.

We note that the availability of the horizontal interest holding option may be significant from an economic efficiency (or feasibility) perspective in circumstances where a transaction already includes certain structural features (such as a subordinated note class) which could otherwise satisfy the retention requirement – as the originator would need to retain an additional interest using an available holding option, thereby reducing the possible funding benefit and efficiency of the arrangement. We note that this point may have enhanced significance in the context of UK mortgage master trust transactions if other holding options – such as the seller's interest option – were also not available (as relevant originators would be left with fewer retention holding options to choose from and may end up retaining various different interests in the transaction). Please see below for further comments with respect to the seller's interest holding option.

More generally, we note that any effective removal of the ability of EU sponsors to use the horizontal interest holding option may result in relevant market participants being unable to comply with the U.S. regime and, as a result, restrict access to the U.S. market.

Mismatch in regimes will restrict cross-border liquidity

As noted above, the Proposed Rule directly conflicts with the EU retention requirements in certain (limited) respects. For example, under the EU requirements, in transactions involving multiple non-affiliated originators (the definition of which overlaps with both the sponsor and the originator definitions used in the Proposed Rule), retention is required by each originator with reference to the proportion of the total securitised exposures (or by the sponsor, which definition would be relevant primarily in the context of ABCP programme sponsors). In contrast, under the Proposed Rule, one sponsor would be required to comply on behalf of the other sponsors. As a result, it will not be possible to comply with both regimes in the context of certain securitisation transactions involving multiple originators. Non-compliance will result in an effective restriction on cross-border market access.

We further note that, in the absence of coordination between the authorities, the ability of U.S. market participants to access the EU regulated investor market will be restricted in the context of any transactions backed by qualified residential mortgages and/or other qualified assets as such transactions will not satisfy the EU retention requirements.

In general, we encourage the Agencies to avoid the adoption of rules which would directly conflict with the EU regimes and/or which would effectively result in significant compliance challenges in a cross-border context and have a corresponding market closing effect.

(c) Need for certainty with respect to the proposed foreign transactions safe harbour

As noted above, we support the inclusion in the Proposed Rule of a safe harbour which provides useful clarification of the intended scope of application of the requirements in respect of non-U.S. transactions. In order to provide certainty in this regard, however, it is important to ensure that each condition intended to apply with respect to the safe harbour is sufficiently clear. Even if our suggested recognition-related changes to the safe harbour outlined above are not made, we consider that certain aspects of the proposed safe harbour should be clarified.

Clarifications regarding application of proceeds trigger condition

In particular, confirmation should be provided that the 10 per cent. proceeds trigger with respect to sales to U.S. persons turns only on sales forming part of the primary distribution process (and not any secondary market trading activity), in keeping with the general approach applied in the context of Regulation S. While this interpretation would be consistent with the reference in the relevant condition to the ABS interests sold in the "securitisation transaction" as that term is defined in the Proposed Rule (given that it refers to the offer and sale of asset-backed securities by the "issuing entity" and does not refer to sales by other entities), it would be helpful if this was expressly confirmed.

It would also be helpful if confirmation was provided that the ABS interests to be taken into account for the purposes of the proceeds trigger calculation (i.e. the denominator figure to be used) include any interests retained by the sponsor or originator. This interpretation appears to be consistent with the wording of the proceeds trigger condition itself and the definitions of "ABS interests" and "securitisation transaction", but confirmation would be helpful for the avoidance of any doubt.

In addition, given the investor protection principle which underlies the 10 per cent. proceeds trigger as described in the proposals, we consider that relevant sales for the purposes of assessing compliance with the trigger should exclude any intra-group placements, including any sales to a U.S.-based subsidiary or affiliate of the sponsor. We appreciate that the Agencies may wish to include a holding condition in connection with such a carve-out (to guard against potential abuse via next day trades of intra-group transferred positions). Any such condition should be considered carefully to ensure that it strikes the appropriate balance and does not unduly restrict on-sales.

Appropriate proceeds trigger level

The questions raised in the Proposed Rule seek feedback on whether the proposed 10 per cent. proceeds trigger should be lower or higher. We do not consider that a proceeds trigger lower than 10 per cent. should be used. Such a level would draw in transactions involving a very limited U.S. offering connection, which transactions are unlikely to significantly impact the interests of U.S. investors. We support the setting of the proceeds trigger at a level higher than 10 per cent. as it is not clear that a transaction involving

sales to U.S. persons at the current proposed level should be regarded as sufficiently closely connected to the U.S.
Please see our comments above with respect to the proceeds trigger which we consider should apply with respect to transactions which comply with the EU retention regime (if our preferred route of full recognition is not taken up by the Agencies for such transactions).

Other possible points of confusion relating to safe harbour conditions

We note that there is also potential for confusion with respect to the entity which should be regarded as the sponsor for the purposes of assessing compliance with the condition which refers to the location of the sponsor and the issuing entity. This could be the case in particular where the transaction does not clearly involve an entity which satisfies the sponsor definition by organising and initiating a securitisation by selling or transferring assets. For example, certain secured loan structures do not involve a sale or transfer of assets and so do not involve a corresponding entity which is involved in these matters. In addition, the guidance provided by the Agencies with respect to CLO managers (in footnote 42 of the Proposed Rule) suggests that an entity may be regarded as the sponsor if it undertakes certain asset selection and asset management tasks – this goes beyond the terms of the definition and, if this position is maintained, it may create confusion with respect to the entities which may be relevant for the purposes of the safe harbour. We comment further on CLOs below.

(d) Scope of relevant transactions; potentially heightened significance for EU market participants

As noted above, certain threshold application definitions used for the purposes of the Proposed Rule (namely, the definition of "asset-backed security" and the corresponding definition of "security" in the Securities Exchange Act) are widely cast and unclear in certain respects. As such, there is some uncertainty with respect to the transactions intended to fall within the scope of the Proposed Rule, aspects of which may have potentially heightened significance for EU market participants.

Covered bonds

For example, questions have been raised as to whether the Proposed Rule would apply in respect of certain covered bond products, such as structured covered bonds. It seems unlikely that covered bond arrangements would be regarded by the Agencies as targeted transactions given that such arrangements already provide for full alignment of interests between the sponsor and the investors, however, any uncertainty in this regard would be unhelpful to the covered bond market in general. We understand that provisions have been included in the draft U.S. Covered Bond Act of 2011 to clarify the scope of the asset-backed security definition, but that the relevant provision refers to U.S. covered bond products only. It would arguably be an absurd result if U.S. covered bonds were clearly outside the scope of the retention requirements but certain European covered bonds were not, particularly given the significance of covered bonds as a funding source in Europe.

To remove any doubt as to the position with respect to covered bonds in general, we encourage the Agencies explicitly to confirm that covered bonds (including structured covered bonds) are not within scope. This would be consistent in principle with the general approach adopted by European authorities in respect of the EU retention requirements.

Certain repackaging transactions; non-targeted transactions

Concerns have also been raised that certain other EU originated arrangements may be caught by the Proposed Rule (e.g. if they involve a U.S. offering) which would not be caught by the EU regime, including untranched repackaging transactions of corporate debt securities. These transactions are not caught by the EU requirements because the securitisation definition used for such purposes requires the presence of credit risk tranching in the relevant structure.

The rationale for regarding simple repackaging transactions as securitisations under the Proposed Rule is not clear given that such transactions do not give rise to potential "originate-to-distribute" or related interest misalignment issues in the same manner as securitisations. In a corporate debt repackaging transaction, the underlying securities are not created by the relevant corporate issuers with a view to a later securitisation.

We encourage the Agencies to ensure that the retention requirements are applied in a manner which properly reflects the original legislative principles behind the requirements and that non-targeted transactions are not drawn in without clear justification.

(e) Lack of flexibility for mortgage master trust issuers; ability to comply

The Proposed Rule provides for a seller's interest retention holding option but limits the availability of this option to revolving asset master trusts. As a result, revolving pool master trusts involving non-revolving assets – such as UK mortgage master trusts – would not be able to use the seller's interest holding option. Taking into account the principles behind the retention requirements (i.e. alignment of interests), the justification for this difference in treatment (based on the nature of the underlying assets) is not clear.

Certain basic information on UK mortgage master trust structures is set out in Annex III. We would be happy to provide further information on these structures if that would be helpful.

Disproportionate effect on UK market participants

Given the potential difficulty of making other retention holding options work in an efficient manner in a master trust context and the fact that the EU retention regime does not similarly restrict the availability of the seller's interest holding option, the proposed limitation contemplated by the Proposed Rule is likely to operate in a disproportionately restrictive manner for certain EU market participants (i.e. UK originators). We consider that the seller's interest holding option should be made expressly available in the context of both revolving asset and non-revolving asset master trust transactions.

We further note that certain other technical adjustments would be required to ensure the seller's interest holding option works for UK mortgage master trusts. In particular, we note that certain definitions used in the seller's interest holding option proposals would not provide sufficient flexibility as currently drafted. For example, the proposed definition of "seller's interest" refers to an ABS interest in all of the assets held by the issuing entity, whereas in a UK mortgage master trust context, the assets are held by the mortgages trustee and an interposed funding loan arrangement is used. We consider that these technical differences between revolving asset master trusts and UK mortgage master trusts should not be meaningful from a risk retention perspective given that alignment of interests in the assets will still be achieved in effect.

Possible effective restriction of access to U.S. market

The proposed limitation would make it very difficult for sponsors in UK mortgage master trusts to comply with the U.S. regime, particularly given that relevant sponsors will already typically hold a seller's share and so a requirement to hold an additional interest in another manner to satisfy the U.S. requirements will significantly reduce the economic efficiency of the transactions. European market participants are concerned that the proposed limitation would reduce the ability of mortgage master trust issuers to place their bonds in the U.S. market. This has particular significance given the role that the Rule 144A regime has played in the success of recent UK originated RMBS issues.

Please also see our comments above on the related concerns which would arise if the use of the horizontal interest holding option was restricted in circumstances where the sponsor or an affiliate acts as the servicer of the securitisation.

(f) Lack of a feasible holding option for ABCP conduits; ability to comply

As drafted, the retention holding option designed for ABCP conduits included in the Proposed Rule would not work in practice for most ABCP conduits which provide funding for EU originated assets due to the restrictive conditions applied. We understand that comments have also been made that this method would not work for most existing U.S. conduits (a portion of which fund EU assets) either and we refer to the comments made in the SIFMA response in this regard.

Ability to comply with both regimes; restriction of access to U.S. market

To the extent that both the U.S. and the EU regimes apply (which would not be unusual given the proportion of ABCP issued by European conduits funded in the U.S. market), it is not clear that EU market participants would be able to comply in practice. Significantly, the flexibility provided under the EU regime in the context of ABCP programmes for the interest to be retained via programme-wide credit enhancement arrangements (such as via a standby letter of credit provided by the programme sponsor) would not satisfy the U.S. requirements as currently proposed. Use of the other base case holding options contemplated by the Proposed Rule which overlap with the holding options under the EU regime (such as the horizontal interest option or the vertical slice holding option) would be extremely difficult in an ABCP conduit context. This will impact on the practical ability of EU market participants to comply with the Proposed Rule in such a context and, to the extent they are unable to do so, effectively restrict access to the U.S. market.

General significance of ABCP market

We note that the ABCP market in Europe and the U.S. is an important source of low-cost short-term financing for operating businesses of all kinds, from industrial companies to finance and service companies, as well as providing a vital liquidity tool for bank sponsors. According to statistics publicly available in the AFME Securitisation Data Report (sources: Dealogic, Moody's Investors Service, AFME and SIFMA), as at March 2011, ABCP conduits had outstandings of approximately US$265 billion (in the U.S.) and US$14 billion (in Europe). Given the significant practical issues presented by the application of the proposed requirements in respect of ABCP, we are concerned that application of such requirements to relevant structures will cause ABCP conduits to pull out of the market, thereby removing a significant source of financing to businesses and consumers.

(g) Application to managed CLOs

Given that the U.S. retention provisions are intended to address issues arising in respect of "originate-to-distribute" securitisations, we do not consider that the case for applying such requirements to actively managed or "open market" CLOs has been made in principle. Reflecting the fact that the legislation envisioned a completely different securitisation architecture, the Proposed Rule simply does not work for managed CLOs. Moreover, managed CLOs lack a relevant "sponsor" entity (as that term is defined in the Proposed Rule, and as derived from the "securitizer" definition included in the Dodd-Frank Act). In particular, CLO managers would not fall within the sponsor definition (notwithstanding the conclusion reached in footnote 42) as such managers merely select assets to be purchased on behalf of the issuer from many different lenders, rather than actually selling or transferring loans to the CLO.

Lack of a feasible holding option for managed CLOs

In general, the Proposed Rule does not work for managed CLOs given that the proposals do not provide for a means of compliance which acknowledges the typical capital constraints of CLO managers and/or traditional fee-based arrangements for aligning incentives. Unlike securitisation originators, CLO managers do not receive any upfront funding benefit from CLO transactions which could be applied to meet the retention requirements.

Ongoing struggle to make EU regime work for managed CLOs

Our argument is not academic. The experience of CLOs under the European regime demonstrates that risk retention raises significant issues for CLOs. Unfortunately, these issues have not yet been fully resolved under the EU regime. The manner in which the EU regime is framed – i.e. as part of the existing regulatory capital framework – made it difficult in effect for the EU authorities to revisit the existing securitisation definition which applied under that framework (which definition is based on the presence of credit risk tranching and therefore captures managed CLOs in general).

As a result, and in response to concerns that such CLOs do not typically involve an eligible originator or sponsor entity to retain the required interest, the EU authorities have attempted via guidance to establish a way for the retention requirements to be met in a managed CLO context. There are parallels between this guidance and the B-piece buyer holding option referred to in the Proposed Rules. However, aspects of the guidance remain unclear, as does the ability of market participants to structure a managed CLO which would comply with the EU requirements – and compliance with both the EU and the U.S. regime would give rise to further significant issues.

While managed CLO issuance has revived in the U.S. market, a similar recovery has not yet occurred in the European market. There are a number of factors in this regard, although the ongoing uncertainty under the EU retention requirements in a managed CLO context is regarded as having had a contributing chilling effect.

We encourage the Agencies to use the flexibility provided under the legislative provisions to avoid the application issues which come with attempting to apply retention requirements to a structure that is more akin to an investment fund than a securitisation. These issues could be sensibly avoided by making provision for an exemption for managed CLOs. We consider that any exemption provided in this regard should be available regardless of the jurisdiction of origination of the underlying loans and/or of the jurisdiction of regulation of the relevant collateral manager.

(h) Operation of certain requirements in an EU deal context; disproportionate effect

In addition to the points noted above, certain specific requirements or provisions referred to in the Proposed Rule would present particular compliance challenges and/or operate in a disproportionately onerous or restrictive manner in the context of EU transactions. We consider that in principle a level playing field should apply with respect to market participants seeking to comply with the U.S. regime.

Certain U.S. concepts may lack a direct EU equivalent; compliance challenges

The Proposed Rule draws on and refers to certain transaction parties, structures and other concepts that are specific to the U.S. securitisation market. In certain cases, such terms and concepts lack a direct European equivalent and, as a result, there is some uncertainty as to how the proposed requirements may be satisfied in the context of a relevant foreign transaction. For example, as noted above, it is not clear that all EU securitisations will involve a sponsor as defined under the Proposed Rule (e.g. a secured loan transaction, which does not involve a transfer of assets), which may give rise to uncertainty as to how the requirements may be satisfied in the context of such transactions if they involve a U.S. offering.

Reserve account requirements

We also note that certain requirements contemplated by the Proposed Rule appear to provide for a U.S. transaction only and, as a result, may not work or may present significant compliance challenges for non-U.S. transactions. For example, limiting cash investments in the context of reserve accounts to U.S. Treasury securities and deposits in certain FDIC insured institutions would be onerous, costly and impractical for an EU originated transaction given the currency mismatch it would create and other practical problems. The policy rationale for the proposed limitation is not clear.

We encourage the Agencies to provide flexibility for reserve account amounts to be held in other sufficiently liquid and secure assets (including government issued or guaranteed securities and deposits of a regulated bank whose home country supervisor has adopted capital standards consistent with the Capital Accord of the Basel Committee, as amended, provided the bank is subject to such standards) more closely connected to, and in the currency of, an asset origination jurisdiction in respect of the relevant transaction (which could be determined by the application of a minimum asset origination connection threshold test).

Hedging restriction

Significant compliance challenges may also arise for EU originated transactions under the hedging restrictions contemplated by the Proposed Rule. We note that it is not uncommon for EU originators to purchase external credit insurance in respect of certain assets (e.g. trade receivables and residential mortgage loans) to provide protection against potential losses. This is a long-standing practice and is applied in respect of securitised and non-securitised assets.

The guidance provided by the EU authorities with respect to the EU retention regime acknowledges this legitimate business practice and clarifies that the restriction on hedging with respect to the credit risk of any exposures retained to satisfy one of the relevant holding options will not be breached in circumstances where the securitised assets also benefit from such insurance. We encourage the Agencies to provide similar flexibility for these traditional insurance arrangements.

Exemption for government-backed ABS

Lastly, we note that the exemption under the Proposed Rule for U.S. government-backed ABS and the lack of provision for non-U.S. government-backed ABS is very restrictive and will effectively restrict U.S. investor access to such non-U.S. ABS. This is out of step in part with the EU retention regime which includes a general exemption for transactions backed by "central government" claims without restriction. The rationale for the restrictive approach contemplated by the Proposed Rule is not clear given its intended focus on perceived failures in the ABS market arising as a result of the "originate-to-distribute" model, which model should not be relevant with respect to any government-backed ABS.

Possible effective restriction of access to U.S. market

Without provision for sufficient flexibility which takes into account non-U.S. arrangements on some level, European (and other non-U.S.) market participants may struggle to comply with the proposed requirements, which may operate as an effective barrier to offerings in the U.S. of European issues. Such a barrier would create an uneven playing field for European issuers and may result in disruption in the already fragile European ABS market.

Thank you once again for the opportunity to comment on the Proposed Rule. We would be happy to answer any questions you may have and, as noted above, we would be grateful for an opportunity to meet with you at your earliest convenience to discuss our response.

Yours faithfully

Richard H. Hopkin

Richard Hopkin, Managing Director
Association for Financial Markets in Europe

CC: Christian Moor, European Banking Association

Annex I

AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME was formed on 1 November 2009 by the merger of the London Investment Banking Association and the European operations of the Securities Industry and Financial Markets Association.

AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA) and is an affiliate of the U.S. Securities Industry and Financial Markets Association (SIFMA) and the Asian Securities Industry and Financial Markets Association (ASIFMA). For more information, visit the AFME website, www.AFME.eu.

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

Finance for Europe

Annex II

Summary comparison of EU retention regime to U.S. initiatives

	Dodd-Frank Act and corresponding notice of proposed rulemaking (NPR)	EU Capital Requirements Directive amendments, 'CRD2'
Basic provision	Act refers to a requirement for a securitizer[2] to retain an interest in the credit risk of any asset that it, through the issuance of an asset-backed security, transfers, sells or conveys to a third party; the NPR proposes generally to require a sponsor[3] to retain an economic interest in the credit risk of any securitised assets[4] (except where an exemption or provision for adjustment applies) Relevant authorities hold significant discretion in respect of the implementing rules to be made under the Act; the NPR released at the end of March 2011 sets out the proposed implementing rules	General restriction on an EU regulated credit institution taking on an exposure to the credit risk of a securitisation position (as an investor or counterparty) unless one of the originator[5], sponsor[6] or original lender[7] explicitly discloses that it will retain a "material net economic interest" in respect of the transaction CRD2 does not have direct effect in EU member states and requires national implementation; member states have discretion to add to (but not reduce) the Directive requirements in their implementing rules
Scope	Expected to apply in general to entities regulated by the relevant rule-making authorities and other entities in respect of which such authorities would have jurisdiction; the NPR indicates that the rules would apply to all sponsors that fall within the new section 15G of the Securities Exchange Act	Applies in general if an EU regulated credit institution acquires a credit risk exposure to a securitisation[8] (on issuance or afterwards), regardless of the location of establishment of the issuer, originator, sponsor or original lender and regardless of the jurisdiction of origination of the underlying assets

[2] The Act defines this term to mean "(a) an issuer of an asset-backed security; or (b) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer".

[3] The term "sponsor" is defined in the NPR to mean "a person who organizes and initiates a securitisation transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity".

[4] The term "securitized asset" is defined in the NPR to mean "an asset that (a) is transferred, sold, or conveyed to an issuing entity; and (b) collateralizes the ABS interests issued by the issuing entity".

[5] The term "originator" is defined in the CRD to mean "either (i) an entity which, either itself or through a related party, directly or indirectly was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitized or (ii) an entity which purchases a third party's exposures onto its balance sheet and then securitizes them".

[6] The term "sponsor" is defined in the CRD to mean "a credit institution other than an originator that establishes and manages an ABCP programme or other securitisation scheme that purchases exposures from third party entities".

[7] This term is not defined.

[8] This is widely defined in the CRD as "a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranched, having the following characteristics: (a) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures; and (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme".

	Dodd-Frank Act and corresponding notice of proposed rulemaking (NPR)	EU Capital Requirements Directive amendments, 'CRD2'
	NPR provides for a proposed safe harbour for "predominantly foreign transactions" subject to certain conditions (including that the transaction is not SEC-registered, that no more than 10 per cent. of the value of the interests sold are sold to U.S. persons, that neither the sponsor nor the issuer are "U.S. located entities", etc.) Applies in respect of transactions involving the issuance of "asset-backed securities" as defined in section 3(a)(77) of the Securities Exchange Act; definition of relevant securities goes beyond Regulation AB Proposals refer to exemptions for securitisations backed by only "qualified residential mortgages[9]" provided certain conditions are satisfied and for certain transactions backed by certain assets insured or guaranteed by the U.S. or an agency of the U.S. or obligations issued by the U.S. or an agency of the U.S.; provision for downward adjustment of the retention level (to zero) is also made for transactions backed by certain types of assets (i.e. commercial real estate loans, auto loans or commercial loans) that satisfy detailed underwriting and other standards NPR suggests that the rules would apply to ABS issued on or after the effective date of the final rules but position somewhat unclear	Exemptions are included for transactions (i) where the underlying exposures are claims on or wholly guaranteed by central governments/banks, public sector entities of member states, certain highly rated institutions and multilateral development banks or (ii) based on a clear and accessible index (correlation trading portfolio activities) Took effect from the start of 2011 for new transactions and will take effect from end 2014 for existing transactions if new underlying assets are added or assets are substituted after that date

[9] While the term "qualified residential mortgage" is not defined in the Act, provision is made for the definition to be made jointly by various authorities taking into consideration various factors. The NPR proposes to specify various detailed conditions, including with respect to the borrower credit history, payment terms, loan-to-value ratio, down payment levels, appraisals/valuations and borrower ability to repay (including a front end ratio and a back end ratio).

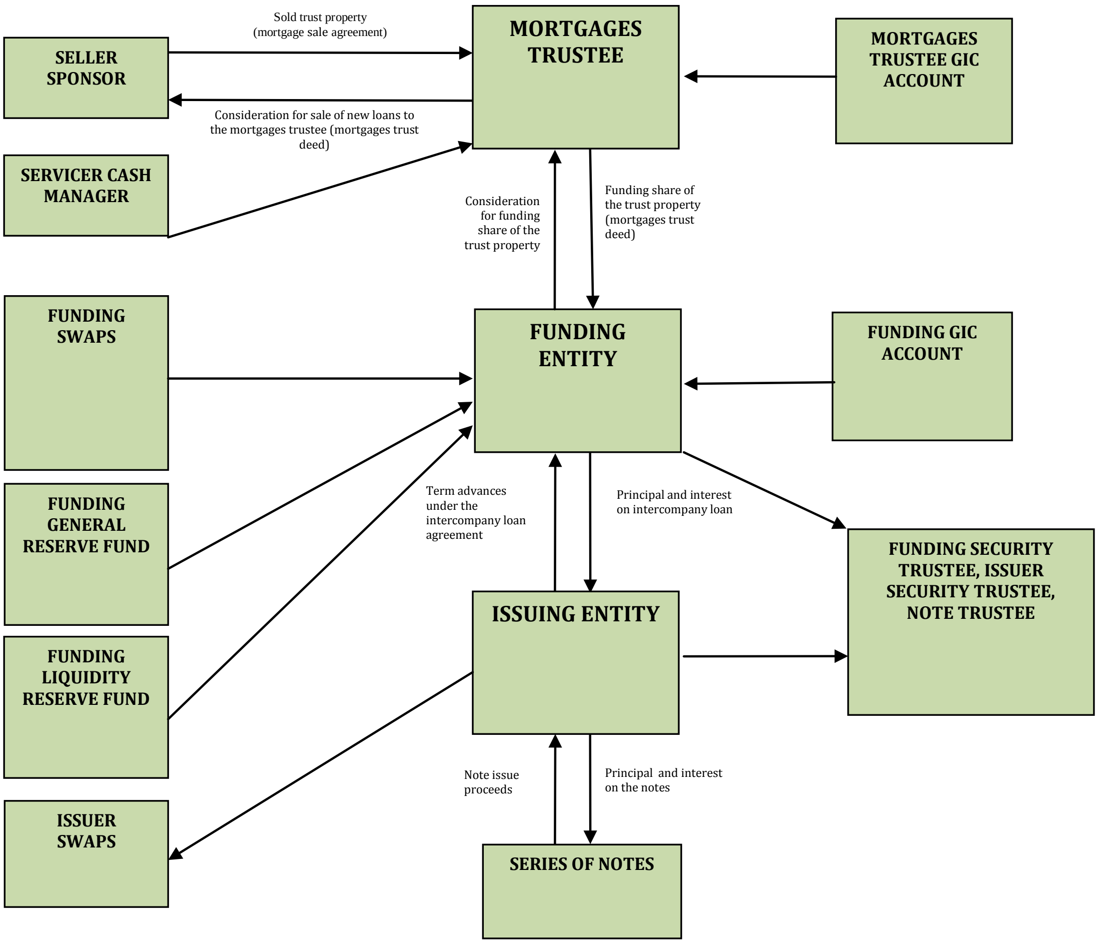
	Dodd-Frank Act and corresponding notice of proposed rulemaking (NPR)	EU Capital Requirements Directive amendments, 'CRD2'
Interest level and holding options	Required minimum interest level based in general on 5 per cent. of the credit risk transferred, with provision for downward adjustment (to zero) in circumstances where the underlying assets are of a specified type (i.e. commercial real estate loans, auto loans or commercial loans only) and such assets satisfy certain detailed underwriting and other standards NPR refers to various holding options including a vertical slice, first loss position, L-shaped interest, seller share, randomly selected (equivalent) exposures, as well as certain tailored holding options intended to provide flexibility for particular structures or underlying assets (including for ABCP, CMBS and GSE-guaranteed MBS) Retained interest may be allocated between a sponsor and an originator[10] in certain circumstances, although any interest allocated to the originator would result in a reduction of the interest required to be held by the sponsor; if a deal involves multiple sponsors, then one sponsor should hold on behalf of all	Required minimum interest level is set at not less than 5 per cent. of the nominal value/amount; interest is required to be held via a vertical slice, first loss tranche or, in certain circumstances, an interest in the securitised exposures (i.e. a seller share) or randomly selected (equivalent) exposures Retained interest is required to be held by one of the originator, sponsor or original lender (with flexibility for another entity whose interests are most appropriately aligned with investors' interests to retain in certain circumstances); if a deal involves multiple non-affiliated originators or sponsors, then each originator should hold a proportionate interest Notwithstanding that it is intended that a harmonised retention framework should apply in Europe, the German parliament has put forward implementing rules that provide for a minimum retention level of 10 per cent. from 2015, although it has been agreed in principle that the German federal government will prepare an additional evaluation report by June 2013 on whether an increase in the level to 10 per cent. has been achieved on an EU level and, if this has not been achieved, then an evaluation of the effect of a unilateral increase in the retention level on Germany's financial markets will also be required

[10] The term "originator" is defined in the NPR to mean "a person who (a) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and (b) sells an asset directly or indirectly to a securitizer".

	Dodd-Frank Act and corresponding notice of proposed rulemaking (NPR)	EU Capital Requirements Directive amendments, 'CRD2'
Hedging	Restrictions would apply on transfers of the retained interest or assets (other than to a consolidated affiliate) and on any hedging arrangements with respect to the credit risk required to be retained under the rules; hedge positions which are not materially related to the credit risk of the retained ABS interests or assets would not be prohibited	Hedging is restricted in general although the European Banking Authority (EBA) has indicated that restricted hedging arrangements should be limited to those which hedge the credit risk of the securitisation positions or exposures that specifically fulfil the retention requirement
Penalties / consequences of non-compliance	Specific penalties are not specified; the enforcement mechanisms and penalties generally available to the relevant rule-making authorities would apply; enhanced penalties are available as a result of Dodd-Frank Act amendments	Specific penalties are specified for EU regulated credit institutions; the penalty is framed as a proportionate additional risk weight of not less than 250% of the risk weight which would otherwise apply to the relevant securitisation position acquired; the penalty may be increased but is capped at 1250 per cent.; the EBA has proposed that national supervisors should apply a formula to determine the penalty, although flexibility is preserved for adjustments EBA has indicated in its guidance that the penalty will apply to EU regulated credit institution investors where they do not e.g. establish that the originator, sponsor or original lender disclosed that it would hold the required interest
Timing	Act was approved by the U.S. Senate in July 2010 Corresponding rules are to be prescribed within 270 days after the date of enactment (i.e. by mid-April 2011); a notice of proposed rulemaking was released at the end of March 2011 and the consultation period ends on 1 August 2011 (extended from 10 June 2011) Once agreed, the final rules are to become effective (i) one year after final rules published for securities backed by residential mortgages and (ii) two years after such rules are published for all other asset-backed securities	Amending Directive approved by EU Parliament in May 2009 EU member states were required to implement the requirements by the end of October 2010; as of June 2011, most members states had implemented the requirements Took effect for new transactions from the start of 2011 and will take effect from end 2014 for existing transactions if new underlying assets are added or assets are substituted after that date

Annex III

UK mortgage master trust – basic structure diagram



Summary of basic features of transaction structure

(1) The seller will sell residential mortgage loans and their related security to the mortgages trustee. From time to time the seller may, subject to satisfaction of certain conditions, sell further loans and their related security to the mortgages trustee.

(2) The mortgages trustee holds the loans and other property on trust for the benefit of the seller and funding pursuant to a mortgages trust deed. Each of the seller and funding has a joint and undivided interest in the trust property, but its entitlement to the proceeds from such property is in proportion to its respective share.

(3) The cash manager distributes receipts and allocates losses on the loans to funding and the seller based on their (fluctuating) percentage share in the trust property. The issuing entity will make term advances available to funding pursuant to the intercompany loan agreement from the proceeds of each series of notes. The mortgages trustee allocates principal receipts on the loans between funding and the seller in amounts depending on whether funding is required to pay amounts on the intercompany loan on the next funding payment date or funding is accumulating cash to repay a bullet term advance or a scheduled amortisation instalment or equivalent, as the case may be.

(4) Funding will use the proceeds of term advances received from the issuing entity under the intercompany loan to either: (a) make an initial contribution to the mortgages trustee to acquire a share of the trust property (the mortgages trustee will use the proceeds of the initial contribution to pay the seller part of the consideration for loans (together with their related security) sold to the mortgages trustee in connection with the issuance of notes by the issuing entity and the making of the relevant term advance to funding, which will result in a corresponding increase in funding's share of the trust property) or make a further contribution to the mortgages trustee to acquire part of a further funding company's share and/or the seller's share of the trust property; (b) fund or replenish a reserve fund; and/or (c) repay one or more of the existing term advances then outstanding.

(5) Funding will use a portion of the amounts received from its share in the trust property to meet its obligations to pay interest, principal and certain fees due to the issuing entity under the intercompany loan agreement and to replenish any relevant reserve funds as well as paying certain fees and expenses. Funding's obligations to the issuing entity under the intercompany loan agreement will be secured under the funding deed of charge by, among other things, funding's share of the trust property.

(6) The issuing entity's obligations to pay principal and interest on the notes will be funded primarily from the payments of principal and interest received by it from funding under the intercompany loan agreement. The issuing entity's primary asset will be its rights under the intercompany loan agreement. Neither the issuing entity, the note trustee, the issuer security trustee nor the noteholders will have any direct interest in the trust property, although the issuing entity will have a shared security interest under the funding deed of charge in funding's share of the trust property.

(7) Subject to satisfying certain issuance tests, the issuing entity will issue notes in separate series and classes (or sub-classes) from time to time. The issuing entity may issue notes of any class on any date provided there is sufficient credit enhancement on that date, either in the form of lower-ranking classes of notes or other forms of credit enhancement. The issuing entity's obligations under, among other things, the notes will be secured under the issuer deed of charge entered into with, among others, the issuer security trustee, by, among other things, the issuing entity's rights under the intercompany loan agreement.