October 23, 2013

Legislative and Regulatory Activities Division
Attn: Docket ID OCC-2013-0010; RIN 1557-AD40
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219
regs.comments@occ.treas.gov

Mr. Robert deV. Frierson, Secretary
Attn: Docket No. R-1411; RIN 7100-AD70
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551
regs.comments@federalreserve.gov

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

Elizabeth M. Murphy, Secretary
Attn: S7-14-11; RIN 3235-AK96
Securities and Exchange Commission
100 F Street, NE
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rule-comments@sec.gov

Alfred M. Pollard, General Counsel
Attn: RIN 2590-AA43
Federal Housing Finance Agency
Constitution Center (OGC), 8th Floor
400 7th Street, SW
Washington, DC 20024
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Regulations Division, Office of General Counsel
Attention: RIN 2501-AD53
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

VIA ELECTRONIC MAIL

Re: Proposed Rule of the Office of the Comptroller of the Currency, Treasury ("**OCC**"), Board of Governors of the Federal Reserve System ("**Board**"), Federal Deposit Insurance Corporation ("**FDIC**"), U.S. Securities and Exchange Commission ("**Commission**"), Federal Housing Finance Agency ("**FHFA**"), and Department of Housing and Urban Development ("**HUD**") (collectively, the "**Agencies**") on Credit Risk Retention (the "**Proposed Rule**")

Dear Sir or Madam:

The Committee on Capital Markets Regulation (the "**Committee**") is grateful for the opportunity to comment on the Proposed Rule, released jointly by the Agencies, which implements credit risk retention requirements pursuant to Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1]

The Proposed Rule is a re-proposal with modifications of a previous release ("**2011 Proposed Rule**") and generally "(i) require[s] a securitizer to retain not less than 5 percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security . . . , transfers, sells, or conveys to a third party, and (ii) prohibit[s] a securitizer from directly or

[1] Securities Exchange Act of 1934, 15 U.S.C. § 78o-11 (2012).

indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 15G [of the Securities Exchange Act of 1934[2]] and the [A]gencies' implementing rules."[3] The Proposed Rule also sets forth exemptions for certain types of securitization transaction, including where the assets collateralizing a given asset-backed security ("**ABS**") constitute "qualified residential mortgages" ("**QRMs**"), as defined by the Agencies.[4]

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes thirty-two leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Dean, Columbia Business School) and John L. Thornton (Chairman, The Brookings Institution) and directed by Hal S. Scott (Nomura Professor and Director of the Program on International Financial Systems, Harvard Law School). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

In May 2009, the Committee released a comprehensive report entitled *The Global Financial Crisis: A Plan for Regulatory Reform* ("**May 2009 Report**"), containing fifty-seven recommendations for reforming U.S. financial regulatory structure.[5] We would encourage you to consider our comments on the Proposed Rule in conjunction with our May 2009 Report and our letter of July 22, 2011 commenting on the 2011 Proposed Rule (the "**2011 Letter**").[6]

In our May 2009 Report, we expressed our support for credit risk retention as an effective means of aligning investor and securitizer incentives, yet we noted that it does not "make sense for all securitizations."[7] In the 2011 Letter, we noted our concern that the 2011 Proposed Rule was unnecessarily burdensome and threatened wider economic effects.[8] The Committee is pleased to report that we support the Agencies' revisions to the 2011 Proposed Rule. The additional flexibility accorded to securitizers is consistent with alleviating the concerns highlighted in our previous comments.

More specifically, in our 2011 Letter, we recommended that the Agencies expand the narrow QRM definition, noting that the proposed definition would unnecessarily restrict the supply of mortgage credit and hamper the housing recovery.[9] We also recommended relaxing the 2011 Proposed Rule's credit history standards as well as the 80 percent loan-to-value and 20

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[2] *Id*.
[3] Credit Risk Retention, 78 Fed. Reg. 57930-34 (proposed Sep. 20, 2013) (hereinafter, "Proposed Rule"), *see also* 15 U.S.C. §78o-11.
[4] Proposed Rule at 57,930-34.
[5] COMM. ON CAPITAL MKTS. REG., THE GLOBAL FINANCIAL CRISIS: A PLAN FOR REGULATORY REFORM (May 2009), *available at* http://www.capmktsreg.org/research.html (hereinafter, "CCMR MAY 2009 REPORT").
[6] Letter from the Comm. on Capital Mkts. Reg. to Carl Kaminski, Senior Attorney, Off. of the Comptroller of the Currency; Elizabeth M. Murphy, Sec'y SEC; Jennifer J. Johnson, Sec'y, Bd. of Governors of the Fed. Res. Sys.; Alfred M. Pollard, Gen. Couns. Fed. Housing Fin. Agency; Robert Feldman, Exec. Sec'y Fed. Deposit Ins. Corp.; Robert Ryan, Deputy Assistant Sec'y, Dept. of Housing & Urban Dev. (July 22, 2011), *available at* http://www.capmktsreg.org/pdfs/2011.07.22%20_Risk_Retention.pdf (hereinafter, "2011 Letter").
[7] CCMR MAY 2009 REPORT at 144.
[8] 2011 Letter at 2.
[9] *Id*. at 4-5.

percent down payment requirements.[10] The Proposed Rule eliminates these requirements. We note that "Alt-A" mortgages, which were at the heart of the recent financial crisis, appropriately remain subject to the risk retention requirement.[11]

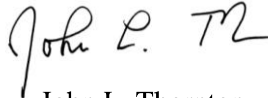
For securitizations subject to the risk retention requirement, we support the Proposed Rule's combination of the vertical, horizontal, and L-shaped risk retention options, allowing securitizers to retain any combination of vertical and horizontal first-loss interests together representing 5% of the fair-value of the transaction.[12] We also welcome the reduced risk retention requirement for "blended" ABSs (*i.e.*, securities including both assets exempt and non-exempt from the risk retention requirement)[13] and the introduction of expiration periods on transfer and hedging of retained risk.[14]

The Proposed Rule also eliminates the premium cash reserve account,[15] which would have required securitizers to retain the proceeds from the sale of excess spread and from premiums realized on the sale of certain types of ABS. As we noted in our 2011 Letter, the premium cash reserve account was not required by Dodd-Frank and would have severely disrupted the securitization market by making it virtually impossible to profit on certain securitizations, reducing the availability of credit.[16]

* * *

Thank you very much for your consideration of the Committee's opinion. Should you have any questions or concerns, please do not hesitate to contact the Committee's Director, Prof. Hal S. Scott (hscott@law.harvard.edu), or its Executive Director of Research, C. Wallace DeWitt (cwdewitt@capmktsreg.org), at your convenience.

Respectfully submitted,



R. Glenn Hubbard
CO-CHAIR

John L. Thornton
CO-CHAIR

Hal S. Scott
DIRECTOR

[10] *Id*.
[11] Proposed Rule at 57,995.
[12] *Id*. at 57,935-68.
[13] *Id*. at 57,979-87.
[14] *Id*. at 57,934.
[15] *Id*.
[16] 2011 Letter at 5.