

# BLACKROCK

July 22, 2014

Via electronic submission

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Washington, DC 20219  
Attn: Legislative and Regulatory Activities  
Division  
Docket Number OCC-2013-0010  
Email: regs.comments@occ.treas.gov

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
File Number S7-14-11  
Email: rule-comments@sec.gov

Mr. Robert deV. Frierson  
Secretary  
Board of Governors of the Federal Reserve  
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Washington, DC 20551  
Docket No. R-1411  
Email:  
regs.comments@federalreserve.gov

Mr. Alfred M. Pollard  
General Counsel  
Federal Housing Finance Agency  
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Email: regcomments@fhfa.gov

Mr. Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
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Comments/RIN 3064-AD74  
Email: comments@fdic.gov

Regulations Division, Office of General  
Counsel  
Department of Housing and Urban  
Development  
451 7<sup>th</sup> Street, SW  
Room 10276  
Washington, DC 20410-0500  
Comments/RIN 2501-AD53

Re: Credit Risk Retention; Proposed Rules; Tender Option Bonds

Dear Ladies and Gentlemen:

On October 30, 2013, BlackRock, Inc. (“BlackRock”) submitted a comment letter (the “Prior Letter”)<sup>1</sup> to the Department of the Treasury by its Office of the Comptroller of the Currency (the “OCC”), the Board of Governors of the Federal Reserve System (the “Board”), the Federal Deposit Insurance Corporation (the “FDIC”), the U.S.

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<sup>1</sup> Letter to Ms. Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, et al., from Kevin G. Chavers, Managing Director, BlackRock, Inc., dated October 30, 2013, available at <https://www.blackrock.com/corporate/en-es/literature/publication/credit-risk-retention-reproposal-usagencies-103013.pdf>.

Securities and Exchange Commission (the “Commission”), the Federal Housing Finance Agency (the “FHFA”), and the Department of Housing and Urban Development (“HUD”, and together with the OCC, the Board, the FDIC, the Commission, and the FHFA, the “Agencies”) in response to the Agencies’ request for public comments on the Proposed Rules entitled “Credit Risk Retention,” Fed. Reg. 57928 (Sept. 20, 2013) (the “Proposed Rules”). We again commend the Agencies for their extensive work in finalizing the Proposed Rules and we appreciate the opportunity to supplement our earlier comments in light of recent industry developments.

Except as expressly set forth below, our comments on the Proposed Rules remain unchanged.

### *Municipal Bond “Repackaging” Securitizations and the Volcker Rule*

After we submitted the Prior Letter, final regulations were adopted implementing Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the “Volcker Rule.” As currently structured, tender option bond (“TOB”) programs<sup>2</sup> typically rely on Section 3(c)(7) of the Investment Company Act and would therefore likely be considered “covered funds” under the Volcker Rule, unless an exemption is available. Because the Volcker Rule restricts banking entities’ relationships with covered funds, if TOB trusts are covered funds that don’t qualify for an exemption, then banking entities could be precluded from performing some of the services they typically provide under TOB programs.

### *The Third-Party TOB Solution*

In response to the Volcker Rule, market participants have developed an alternative TOB structure commonly known as the “Third-Party TOB Solution” for TOB programs where the residual holder is not a banking entity.<sup>3</sup> Under the Third-Party Solution, the residual holder (typically a mutual fund) would act as the sponsor, and therefore the securitizer, of the TOB trust (as these terms are defined in the Proposed Rules), as well as the organizer and offeror of the TOB trust under the Volcker Rule.<sup>4</sup>

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<sup>2</sup> Section III(8) of the Prior Letter addressed the application of the Proposed Rules to TOB programs under the heading “*Municipal Bond Repackaging Securitizations*”.

<sup>3</sup> The Third-Party TOB Solution is not designed for TOB programs where the residual holder is a banking entity.

<sup>4</sup> Section 11(b)(2) of the Volcker Rule states that “organizing and offering a covered fund that is an issuing entity of asset-backed securities means acting as the securitizer, as that term is used in section 15G(a)(3) of the Exchange Act (15 U.S.C. 78o-11(a)(3)).” The Third-Party TOB Solution builds upon Section 11(b)(2) of the Volcker Rule by (i) reassigning to the mutual fund residual holder certain roles and responsibilities previously assumed by banking entities, (ii) “de-branding” TOB programs by eliminating program brand names and branded trusts, and (iii) restructuring liquidity and remarketing services to eliminate ownership of TOB floaters by banking entities.

Although some public industry comment letters expressed concerns about mutual funds being treated as sponsors under the Proposed Rules<sup>5</sup>, market participants are now generally comfortable with this concept. In fact, the Third-Party TOB Solution is based upon the assumption that a mutual fund residual holder will be treated as the sponsor and securitizer of a TOB program under the final Credit Risk Retention rule.

As a result, we now believe it is necessary for a third-party (i.e., a non-banking entity) residual holder to be treated as the sponsor and securitizer of a TOB trust under the final Credit Risk Retention rule. We believe this was the Agencies' intent under the Proposed Rules, but nonetheless wanted to alert the Agencies to the development of the Third-Party TOB Solution in response to the Volcker Rule. We further believe that, although TOB securities were not generally treated as asset-backed securities prior to the Proposed Rules, the Third-Party TOB Solution is consistent with the Proposed Rules' intent to treat them as such. By treating a TOB trust as a securitization vehicle for tax-exempt assets and the mutual fund residual holder as the sponsor and securitizer, the Third-Party TOB Solution mirrors other existing asset-backed securities where banking entities act as underwriters and service providers to third parties seeking to finance assets through securitizations.

In addition to the foregoing, we respectfully ask the Agencies to consider and adopt all of the technical changes and clarifications set forth in the Prior Letter, including those regarding the definitions of "Qualified Tender Option Bond Entity" and "Tender Option Bond".

We thank the Agencies for the opportunity to supplement our comments on the Proposed Rules. If you have any questions or would like further information, please do not hesitate to contact me.

Sincerely,

Kevin G. Chavers  
Managing Director  
BlackRock, Inc.

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<sup>5</sup> See page 7 of Letter to Ms. Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, et al., from Karrie McMillan, General Counsel, Investment Company Institute, dated October 30, 2013, available at <http://www.sec.gov/comments/s7-14-11/s71411-414.pdf>.