JPMorgan Chase & Co.

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October 30, 2013

SUBMITTED ELECTRONICALLY

Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219

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

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Robert deV. Frierson, Secretary

Federal Housing Finance Agency
Eighth Floor
400 7th Street, SW
Washington, DC 20024
Attention: Comments/RIN 2590-AA43,
Alfred M. Pollard, General Counsel

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments, Robert E. Feldman,
Executive Secretary

Department of Housing and Urban Development
Regulations Division
Office of General Counsel
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

RE: Proposed Rule – Credit Risk Retention
OCC Docket No. 2013-0010; Federal Reserve Docket No. R-1411; FDIC RIN 3064-AD74; SEC File No. S7-14-11; FHFA RIN 2590-AA43; HUD RIN 2501-AD53

Ladies and Gentlemen:

JPMorgan Chase &Co. ("JPMorgan Chase," "JPMorgan," "Chase," "We," "Us," or "Our") is pleased to submit this letter in response to the above-referenced proposed rule on credit risk retention released on August 29, 2013 (the "Proposal") by the Board of Governors of the Federal Reserve System (the "Board"), the Office of the Comptroller of the Currency (the "OCC"), the Federal Deposit Insurance Corporation (the "FDIC"), the Securities and Exchange Commission (the "SEC"), the Federal Housing Finance Agency

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(“FHFA”), and the Department of Housing and Urban Development (“HUD”) (collectively, the “Agencies”).

In our comment letter dated July 14, 2012 (“Original Comment Letter”), submitted in response to the Agencies’ original proposed risk retention rule (“Original Proposal”), we provided considerable detail regarding JPMorgan Chase’s status as a leading global financial services company, our involvement in various aspects of the asset-backed securities (“ABS”) market, and the role that various JPMorgan Chase subsidiaries play in the ABS market. We refer the Agencies to our Original Comment Letter for this information and do not repeat it here.

Our Original Comment Letter urged the Agencies to develop a practical and lasting regulatory ABS and risk retention framework that was faithful to the Congressional intent reflected in the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), and to tailor the final rule to that intent. Overall, we believe that the new Proposal reflects significant progress in meeting this goal, and we sincerely commend the Agencies for their willingness to listen carefully to the concerns relating to the Original Proposal that were expressed by a wide variety of stakeholders. The current Proposal will go far in encouraging the reemergence of a viable private residential mortgage-backed securities (“RMBS”) market and in maintaining a strong ABS market in other asset classes. To enhance the effectiveness of the final regulation, we offer several comments regarding the Proposal, which are set forth below.

Although there are many aspects of the Proposal that we feel need to be modified, this letter is not intended to address all of the matters in the Proposal that are of concern to us. We actively participated in the preparation of the comment letters (together, the “Industry Comment Letters”) on the Proposal being submitted to you by the following: the Federal Regulation of Securities Committee and the Securitization and Structured Finance Committee of the Business Law Section of the American Bar Association; the Association for Financial Markets in Europe (“AFME”); The Clearing House Association L.L.C. (“The Clearing House”); the Commercial Real Estate Finance Council (“CREFC”); the Financial Services Roundtable’s Housing Policy Council (“HPC”); the Loan Syndications and Trading Association (“LSTA”); The Mortgage Bankers Association (“MBA”); the Securities and Financial Markets Association (“SIFMA”)[1]; the Structured Finance Industry Group (“SFIG”); and the letter from Ashurst on behalf of Citibank, N.A., Deutsche Bank AG, New York Branch, J.P. Morgan Securities LLC, Societe Generale, New York Branch, Wells Fargo Bank, N.A. and SIFMA relating to tender option bond (“TOB”) programs. While some of the comments we will provide in this letter differ from some of the points made in the Industry Comments Letters, in general we concur with and support the analysis, commentary and recommendations expected to be contained in the Industry Comment Letters, particularly as to matters not covered in this letter[2]. To the extent that we support any of the positions of the Industry

[1] The letter submitted by SIFMA is a joint letter with the Financial Services Roundtable, the American Bankers Association (“ABA”) and the ABA Securities Association.

[2] We would like to note that we did not have an opportunity to review the final versions of all of the Industry Comment Letters before submitting this letter today. We understand that some of these letters, or

Comment Letters with respect to particular asset classes, we will note such support in our comments below on such asset classes. We will not be making any comments in this letter relating to TOB programs or Foreign Securitization Transactions and would refer the Agencies to the letters from Ashurst and AFME, respectively, on those topics, which we fully endorse. You should not infer from our choice of discussion topics in this letter that we are any less concerned about the other issues in the Proposal which are being brought to the Agencies' attention by these groups and other members of the financial and legal communities. However, there are certain items in the Proposal which are of particular concern to us and we also felt that we could provide the Agencies with additional information on how the Proposal would affect JPMorgan Chase and our perspective on its impact on the relevant markets if adopted in its current form.

We want to emphasize that our comments reflect the collective views of JPMorgan Chase in its capacity as sponsor and servicer, J.P. Morgan in its capacity as a broker-dealer and J.P. Morgan Investment Management Inc. and our Chief Investment Office in their capacity as investors. We hope that this consensus approach to our comments more accurately reflects the views of all market sectors, and are our attempt to propose changes that are fair and balanced and will be easier to implement for all market participants.

EXECUTIVE SUMMARY

Our comments relating to the Proposal are summarized as follows:

General Comments

- Measurement of Risk Retention. We agree with the Agencies that Sponsors should be permitted to meet the risk retention requirement by retaining either an eligible vertical residual interest or an eligible horizontal residual interest, or any combination of such interests.
- Fair Value. Sponsors should measure risk retention using a fair value framework as described in U.S GAAP, but should not be required to make the disclosures described in the Proposal. A simple investor disclosure to the effect that risk retention has been measured as required by the Agencies' final regulation should be sufficient. If, nonetheless, the final regulation does include the proposed disclosure requirement, we recommend that the Agencies eliminate that requirement where an eligible vertical interest is used to satisfy the sponsor's risk retention obligation. Vertical retention cannot be "gamed" and is an exact alignment of market value from inception through the life of the transaction.
- Accounting Considerations. In finalizing the risk retention rule, we ask the Agencies to consider the potential impacts to secondary market liquidity, as well as potential increased costs to mortgage credit, arising from the interaction of vertical risk retention and certain applications of FASB rules. In considering whether a

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portions thereof, will be filed after the date of this letter. Our statements herein referring to comments and recommendations made in the Industry Comment Letters are based on the close to final drafts which we reviewed. In the event any of such letters subsequently filed change in any material respect, we may submit a supplement to this letter to address any such changes.

particular transaction is subject to consolidation by a sponsor, broker-dealers affiliated with a sponsor that is subject to the risk retention requirements of the Proposal will need to include in their consolidation analysis any portion of the tranches held in connection with secondary market making. Given the amount of proposed risk retention, the ability of the broker-dealer to provide secondary market support, with respect to a particular affiliate transaction, may be restricted for certain classes of the transaction for the duration of the risk retention period in order to not consolidate the assets and liabilities of the securitization vehicle.

- <u>Certification Relating to Effectiveness of Internal Supervisory Controls</u>. The certification requirement relating to the effectiveness of internal supervisory controls should be imposed on sponsors rather than depositors. The certifications should not be provided to investors, but instead should be provided only to the sponsor's applicable Federal banking agency or SEC, as appropriate.
- <u>Premium Capture</u>. We agree with the Agencies that the premium capture cash reserve requirement should be eliminated.

Qualified Residential Mortgages/RMBS

- We fully concur with the Agencies' proposal to align the Qualified Residential Mortgage ("<u>QRM</u>") definition with the definition of a Qualified Mortgage ("<u>QM</u>") in the regulations implementing Section 129C of the Truth-in-Lending Act.
- The Agencies should not adopt the alternative QM-plus definition for a QRM.
- A sunset on the prohibition on transfers, hedging and financing transactions that may result in the transfer of risk retention makes good sense, but the sunset for RMBS is excessive in duration. Based on our own experience as well as broader mortgage industry experience, we believe the sunset should be established three to four years from the closing of the RMBS transaction.
- JPMorgan Chase concurs with the proposed process for preventing the loss of the QRM exemption that could otherwise result from the inadvertent inclusion of certain non-QRM loans in the ABS.
- JPMorgan Chase concurs with the proposed exemption for seasoned loans, but the standards for qualification as a seasoned loan are unduly conservative. JPMorgan Chase recommends that a "seasoned loan" be defined by reference to the standards used by Fannie Mae and Freddie Mac for their sunset of representation and warranty liability for loans sold to those institutions.
- The Federal banking agencies and the SEC have the legal authority to issue a final regulation that allows the blending of high quality non-QRM assets in a QRM ABS without the QRMs losing their exemption from risk retention. The final regulation should allow the inclusion of high quality non-QRM assets in a QRM ABS, with the QRMs being exempt from risk retention and the non-QRM assets being subject to risk retention unless otherwise exempt. If this approach is not acceptable, the final regulation should allow blending exempt mortgage assets, such as seasoned loans, in the RMBSs that include QRMs, with all such pooled assets remaining exempt from risk retention.

Commercial Mortgage-Backed Securities ("CMBS")

- The definition of a Qualifying Commercial Real Estate Loan ("QCRE") for purposes of an exemption from the risk retention requirements continues to be too restrictive. Given the low historical delinquency and default of CMBS (as we illustrate below), we believe there is justification for broadening the QCRE definition and recommend several modifications to the QCRE definition, namely the elimination of the 10 year minimum term requirement and changes to the parameters for debt service coverage ratios, amortization and maximum loan-to-value ratio.
- The Proposal did not provide any specific risk retention option for "non-conduit" CMBS securitizations, primarily single borrower/single credit CMBS. The slightly more expansive definition of QCRE we are proposing, in particular the elimination of the 10 year minimum term, is critical for these transaction to ensure this important sector of the CMBS market is not negatively affected.
- We do not agree with the requirement for the third-party purchaser ("B Piece Buyer") option under the Proposal that the B Piece Buyers be limited to just pari passu holders and recommend that the Agencies permit "horizontal" holders such that one B Piece Buyer can be subordinated to the other.
- JPMorgan Chase continues to have concerns with the limitation of allocation of retention to originators that contribute 20% or more of the loans in the transaction and recommend that the 20% limitation be lowered to 10%.
- We would propose that another alternative risk retention option that would be beneficial for certain CMBS transactions that are not currently structured with a B Piece Buyer would be the retention of a 5% pari passu participation in each mortgage loan. Such a participation interest would be the most exact alignment of interests with investors and would be relatively simple to achieve given that loan participations are very common in the commercial loan market.

Auto ABS

- The Qualifying Auto Loan ("QAL") criteria, as currently proposed, are too restrictive and not consistent with current standard automobile loan origination practices, and, as a result, we do not expect any automobile loan originator that currently originates automobile loan pools to meet the exceedingly stringent requirements set forth in the Proposal. We believe that the Proposal fails to consider the numerous unique aspects of the automobile loan origination process and, without significant clarification and modification~~;~~, no auto loan originator would be able to utilize the exemption regardless of credit quality.
- While the representative pool option in the Original Proposal was unworkable, we would be supportive of a simplified representative pool risk retention mechanism consistent with the FDIC Safe Harbor which requires sponsors to retain a representative sample of the securitized auto loans. A number of auto securitization sponsors have adopted the FDIC approach over the past several years with minimal disruption to their securitization and marketing processes.
- Auto ABS securitization structures have experienced sound historical performance and strong demand from investors. This illustrates that the structures currently used in the industry already provide an appropriate alignment of interests between issuers and investors. As set forth in the Proposal, the Closing Date Projected Repayment Rate –

Closing Date Projected Cash Flow Rate test could result in substantial overhaul in the way auto ABS deals are currently structured, which would lead to significant cost to issuers and resource commitment from investors.

Revolving Master Trusts

- The proposed "Seller's Interest" definition is inconsistent with and not workable for virtually all existing revolving master trust structures and will need to be modified.
- Due to the daily fluctuations in seller's interest, the measurement and disclosure of the value of Seller's Interest required at the closing of each issuance should be based on the most recent measurement date specified under the transaction documents, as long as the sponsor discloses any material changes that occurred between such measurement date and closing date.
- The specialized Eligible Horizontal Residual Interest ("EHRI") option for revolving master trusts as proposed in Section _.5(f) needs to be modified to be workable and to provide sponsors with the flexibility to satisfy risk retention requirement through a combination of various forms of risk retention already in existence. In addition, such specialized EHRI should be measured in face value (except for excess spread which will be more appropriately measured on the basis of fair value).

Student Loan ABS

- We continue to believe that FFELP Student Loan ABS should be exempt from the credit risk retention requirements.
- FFELP student loans effectively have no underwriting criteria as the primary purpose of the FFELP program was to allow students to finance their education with U.S. government guaranteed student loans, which had reasonably affordable interest rates and favorable loan terms.
- FFELP student loans are unique as they are primarily guaranteed by guarantee agencies (and ultimately backstopped by the U.S. government). The existence of the guarantee alone should exempt FFELP student loans from risk retention requirements.
- The Proposal already contemplates exemptions for other federally insured or government guaranteed loans, and we are of the opinion that FFELP Student Loan ABS should equally be exempt from the risk retention requirement set forth in the Proposal.

ABCP Conduits

- An ABCP conduit that utilizes "partially supported" liquidity facilities should be able to rely on the ABCP conduit risk retention option, so long as the sponsor of the conduit provides at least 5% credit support to the conduit. Additionally, a conduit should be able to have liquidity facilities provided by more than one regulated financial institution, provided that 5% credit support is provided by the sponsor.
- The definitions of Eligible ABCP conduit and Intermediate SPV are too limiting and need to be revised in order to continue to permit many routine conduit transactions.
- The requirements applicable to the originators/sellers funded by an ABCP conduit need to be modified to permit an originator/seller to satisfy its risk retention option in

any manner permitted under the final rule, and to address the risk retention requirements applicable to originators/sellers that are not issuing Exchange Act ABS.

- The disclosure requirements relating to reporting of fair value of an originator/seller's retained interest, and reporting to investors of an originator/seller's noncompliance with its risk retention obligations, are unduly burdensome.
- The 270 day restriction on ABCP tenor is too restrictive in light of other regulatory changes that are expected to impact ABCP conduits, and are unnecessary since liquidity facilities must extend beyond the maturity date of outstanding ABCP.

Collateralized Loan Obligations ("CLOs")

- JPMorgan supports the letters of the LSTA, The Clearing House and SFIG as set forth herein.
- While pleased that the Agencies recognized that the risk retention rules are economically unfeasible for a vast majority of CLO managers, JPMorgan is disappointed that the Agencies did not adopt the LSTA's position that the fee structure of CLO's already align the interest of CLO managers with that of investors and request a re-consideration of that proposal as well as the fee-based proposal of The Clearing House.
- The Agencies' proposed alternative approach of having lead arrangers of syndicated credit facilities retain credit risk for the purpose of a CLO satisfying Section 941 (the "Arranger Proposal") is not a feasible alternative in that (i) it unduly restricts a bank's tools for sound risk management and (ii) the representations and covenants required of a lead arranger create undue potential liability and risk.
- The hedging prohibition impairs liquidity for term loan B tranches since it will discourage lead arrangers from providing liquidity in the secondary loan market.
- The Arranger Proposal, in its requirement that a bank hold 5% of the term loan tranche unhedged, decreases the amount of other credit which can be provided to the borrower and its corporate family, such as revolving credit facilities and cash management (credit that a bank is uniquely qualified to provide).
- The CLO risk retention requirements with or without the Arranger Proposal will significantly impair liquidity to non-investment grade borrowers and harm the economy as the impairment to CLO origination will, along with other factors, mean fewer potential lenders of term loans to non-investment grade borrowers, which in turn will lead to higher costs of liquidity to such borrowers and/or a severe shortage of liquidity.

DETAILS COMMENTS

Our detailed comments are set forth in the following eight sections:

1. GENERAL COMMENTS

A. Measurement of Risk Retention

The Proposal will allow a sponsor to meet the risk retention requirement by retaining either an eligible vertical residual interest or an eligible horizontal residual interest, or any combination of such interests. JPMorgan Chase commends the Agencies for the flexibility reflected by the Proposal and recommends that the Agencies adopt this feature as proposed.

Different sponsors may wish to address their risk retention obligations in different ways in order to meet the unique needs of their institutions. So long as a sponsor's risk retention obligations are, in fact, met, there should be no supervisory preference for one method over another. Accordingly, the Agencies' general approach will be sufficient to meet the requirements of Section 941 of Dodd-Frank as well as the needs of individual sponsors, though as we discuss more fully in our asset class specific comments below, we would recommend the Agencies add some additional options for meeting the risk retention requirements which will provide additional beneficial flexibility to sponsors.

B. Fair Value

The Proposal requires sponsors to measure risk retention using a fair value framework as described in U.S GAAP. While we generally agree with this approach, we have certain issues with the fair value framework that are specific to certain asset classes and which we will discuss more fully in the some of the asset class specific sections below. However, we have some general concerns that cut across asset classes. Given the range of results that may be the consequence of the key variables selected by sponsors in determining fair value, the Agencies have proposed to require each sponsor to disclose specified information on how it calculates fair value. Although certainly well intentioned, JPMorgan Chase is concerned that this approach will have unintended adverse consequences. Given the extensive information that will be available to investors, JPMorgan Chase believes that the needs of all stakeholders will better be met by requiring each sponsor to provide a simple investor disclosure to the effect that risk retention has been measured as required by the Agencies' final regulation. If, nonetheless, the final regulation does include the proposed disclosure requirement, we recommend that the Agencies eliminate that requirement where an eligible vertical interest is used to satisfy the sponsor's risk retention obligation.

One concern derives from the methodology for determining fair value. In principle, fair value should reflect the market price, but a market price cannot necessarily be accurately determined in advance of pricing, as the Proposal would require. In practice, the Proposal will require sponsors to determine fair value based upon secondary sources that may, in some instances, be less reliable than a valuation based upon the market price. Also, not all assets have readily observable market prices, making this even more difficult to implement. Further, sponsors will be required – for the first time – to make disclosures of loss projections, and quite naturally we are concerned that sponsors will be subjected to lawsuits if and when those projections differ from actual loss experiences. JPMorgan Chase believes that the potential liability that will be established by the proposed disclosure is not justified by the benefit expected to be derived from the disclosure. Moreover, the risk of litigation may convince some potential sponsors to choose not to participate in the ABS market at all, even where the issuance of an ABS otherwise makes financial sense.

A second concern is that the proposed disclosure will require the sponsor to provide information that is derived from data that is proprietary and highly confidential. We fear that the information contained in the disclosures could be reverse engineered and used by third parties to the competitive disadvantage of the sponsor.

Investors that purchase ABS interests generally have extensive information at their disposal. In some asset classes, particularly RMBS and CMBS, there is considerable loan-level data that will be made available to investors, and this will enable them to make informed investment decisions relating to the ABSs that are available in the market. More extensive information will be available as required by the pending changes to Regulation AB. Moreover, investors generally receive extensive representations and warranties in connection with the sale of each ABS.

In light of the foregoing, JPMorgan Chase believes that the proposed disclosure requirement is not appropriate or necessary. Given the extensive information that will be available to investors, JPMorgan Chase believes that the needs of all stakeholders will better be met by requiring each sponsor to provide a simple investor disclosure to the effect that risk retention has been measured as required by the Agencies' final regulation.

If, nonetheless, the final regulation does include the proposed disclosure requirement, we recommend that the Agencies eliminate that requirement where an eligible vertical interest is used to satisfy the sponsor's risk retention obligation. (In practice, we would anticipate that many sponsors will elect to retain an eligible vertical interest inasmuch as retaining an eligible horizontal interest could have consolidation implications.) By definition, a sponsor holding an eligible vertical interest will be exposed to the same risk of loss as all of the investors in the related ABS, and there is no likelihood that the sponsors will evade their risk retention obligations. It is for this reason that the Proposal's disclosure requirements for eligible horizontal interests are more extensive than its disclosure requirements for eligible vertical interests. It should not be necessary for sponsors holding eligible vertical interests to provide disclosures at all, and JPMorgan Chase recommends the elimination of this requirement.

C. Accounting Considerations

While we appreciate the flexibility provided in the Proposal to allow a sponsor to meet the risk retention requirement in a number of ways, and the Agencies recognition that this flexibility helps a sponsor in structuring the retention in a way that in and of itself does not result in a sponsor having to consolidate the assets and liabilities of the securitization on its balance sheet, we would note that accounting considerations still remain with the

Proposal. Therefore, in finalizing the risk retention rule, we ask the Agencies to consider the potential impacts to secondary market liquidity, as well as potential increased costs to mortgage credit, arising from the interaction of vertical risk retention and certain applications of FASB rules. Under the Proposal, in instances where a broker-dealer (or an affiliate) is a sponsor that elects vertical risk retention, such sponsor will hold a pro-rata portion of each tranche issued in the ABS transaction. If in addition to the tranches retained by the sponsor, an affiliate of the sponsor is also the servicer of a significant portion of the transaction and thus deemed to have control for purposes of ASC 810 (SFAS 167), the sponsor will need to assess whether or not to consolidate the transaction. In considering whether a particular transaction is subject to consolidation by a sponsor, and depending on firm specific thresholds and policies for purposes of ASC 810 (SFAS 167), broker-dealers affiliated with a sponsor that is subject to the risk retention requirements of the Proposal may need to include in their consolidation analysis any portion of the tranches held in connection with secondary market making. Given the amount of proposed risk retention, the ability of the broker-dealer to provide secondary market support, with respect to a particular affiliate transaction, may be restricted for certain classes of the transaction for the duration of the risk retention period in order to not consolidate the assets and liabilities of the securitization vehicle. While this issue has more applicability, and therefore is of particular concern, in RMBS transactions, the consolidation risk in this situation could apply to other assets classes and thereby restrict the liquidity of other ABS as well.

D. Certification Relating to Effectiveness of Internal Supervisory Controls

The Proposal establishes the QRM exemption from risk retention, as well as exemptions for qualifying commercial loans, commercial real estate loans and auto loans, and conditions those exemptions, in part, on the depositor's certification that it has evaluated the effectiveness of its internal supervisory controls and concluded that those controls are effective. The sponsor must provide a copy of the certification to potential investors prior to sale of the ABS and, upon request, to the SEC and its appropriate Federal banking agency, if any. While JPMorgan Chase recognizes that the certification requirement is expressly mandated by Section 941 of Dodd-Frank, we are concerned with the imposition of the certification requirement on the depositor of the ABS and the duty to provide a copy of the certification to investors.

JPMorgan Chase believes that it would be more appropriate to impose the certification requirement on the sponsors, who ultimately are the responsible entities that organize and initiate the securitization transactions by selling or transferring assets to the issuing entity. The depositor entity is generally a special purpose entity with no real management so we feel that the sponsors are the entities that are likely to have the internal supervisory controls that should be assessed. This approach would be consistent with Section 941 of Dodd-Frank, which states that the SEC "shall require the issuer" to provide the certification.

Finally, JPMorgan Chase believes that the certification should, in all instances, be provided solely to the appropriate Federal banking agency, if any, and, in the absence of an appropriate Federal banking agency, to the SEC. The certification is provided as a required element of the QRM or other qualifies asset exemption from risk retention, which essentially is a safety and soundness/supervisory function. That being the case, the appropriate recipient of the certification should be the sponsor's applicable Federal banking agency or SEC, as appropriate. Those agencies have been given full enforcement authority by Section 941 of Dodd-Frank, which means that the sponsors will take the certification process seriously. Further, this approach is consistent with Section 941, which nowhere states that the certification must be provided to the investors rather than the appropriate Federal agencies. We also note that by not requiring sponsors to provide certifications to investors, the final rule will eliminate a source of potential liability.

E. Premium Capture Cash Reserve Account ("PCCRA")

The Proposal removes the PCCRA requirement contained in the Original Proposal. JPMorgan Chase agrees that it would be best to eliminate the PCCRA requirement, and we commend the Agencies for their responsiveness to the comments that were submitted with respect to this issue.

2. QUALIFIED RESIDENTIAL MORTGAGES/RMBS

In addition to our comments below, we participated in the comment letters submitted on the Proposal by HPC, MBA and SIFMA and endorse the positions taken in those letters.

A. Definition of a "QRM"

The Agencies propose to align the definition of a QRM with the definition of a QM in the regulations implementing Section 129C of the Truth-in-Lending Act. (At present, the only final regulation defining QMs is the Consumer Financial Protection Bureau's ("CFPB's") ability-to-repay rule, so our letter will comment specifically on that regulation alone.) Although our Original Comment Letter recommended a somewhat more conservative definition for a QRM, after careful consideration JPMorgan Chase has been persuaded by the wisdom of the Agencies' Proposal. Therefore, we fully concur with the Agencies' approach, and we ask the Agencies to utilize this definition without change in the final risk retention regulation.

The CFPB issued its final ability-to-repay rule after many months of diligent work and after it had carefully considered the input of all interested stakeholders. We believe that the CFPB's definition of a QM reflects a thoughtful application of the principles dictated by Section 1412 of Dodd-Frank, which lays out the QM concept. As a result, a QM is, indeed, a loan where the lender, regulators, investors, and the ABS market alike will have a reasonable and good faith belief that the borrower will be able to repay the loan according to its terms. As it develops performance data over time, the CFPB will have the opportunity to revise its QM definition if this is necessary to meet the Congressional intent reflected in Dodd-Frank.

The approach taken by the Agencies in the Proposal is true to the letter and spirit of Section 941 of Dodd-Frank, which requires the Agencies to develop a QRM definition that takes into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default. Section 941 further requires that the QRM definition be no broader than the definition of a QM, and, by definition, the Agencies have adhered to this directive. Nothing in Section 941 requires the Agencies to develop a QRM definition that is narrower than the QM definition, and the Agencies should not do so because the QM definition is sufficient to meet the Congressional standards embodied in Section 941.

Strong public policy supports the Agencies' decision to align the QRM and QM definitions. This approach will preserve access to credit for the most financially vulnerable Americans, including first-time homebuyers, residents of low and moderate income communities, and members of historically disadvantaged minority groups. In addition, aligning these two definitions will create operational consistency in the underwriting process, thereby avoiding errors and ensuring the highest level of compliance with both the QM and risk retention regulations.

The Agencies have also surfaced for consideration an alternative QRM definition, referred to as "QM-plus." This is a far more restrictive QRM definition. In addition to meeting the standard QM test (with no exception for loans that are eligible for purchase, guarantee or insurance by the specified government agencies), QM-plus loans are limited to 1-4 real properties that are the principal dwellings of the borrowers; must be first liens on the property (with no other liens being permitted, in the case of purchase loans); the borrowers must meet certain credit history requirements (including no current 30-day late payments; no 60-day late payments in the previous 24 months; no bankruptcies, judgments for unpaid debts, personal property repossessions, 1-4 residential property foreclosures, short sales or deeds in lieu in the previous 36 months); and a maximum loan-to value-ratio of 70% at closing (including any junior liens, in the case of a non-purchase loan), with value being determined by an appraisal (or the contract price, if lower, in the case of a purchase loan).

Although, in concept the QM-plus definition might be expected to result in mortgage loans that are even more likely to be repaid, this would be at a considerable cost in terms of mortgage availability (particularly for the most financially vulnerable Americans) and operational consistency. As the Agencies undoubtedly will be hearing from other mortgage lenders, trade groups and consumer groups alike, the QM-plus definition will significantly exclude large numbers of Americans from the residential mortgage market, and will substantially increase the cost of mortgage financing for those borrowers who cannot qualify for QM-plus loans. Aside from the incalculable social cost of such an approach, the QM-plus definition simply goes too far – it is not necessary to define a QRM so conservatively in order to meet the Congressional standard mandated by Section 941 of Dodd-Frank. We also are concerned that the unduly restrictive QM-plus approach will mean that some would-be sponsors will not be able to assemble the critical mass of QRMs necessary to justify the development of ABSs on an economic basis, which will result in a severe impediment to the rebirth of a viable private RMBS market. In short, JPMorgan Chase believes that the Agencies' got it right when they proposed to align the QRM and QM definitions, and we respectfully ask the Agencies to ignore the criticism of those who urge the adoption of the more exclusionary QM-plus definition.

B. Duration of Sunset for Risk Transfers

Section __.12 of the Proposal generally prohibits certain transfers, hedging and financing transactions that may result in the transfer of the credit risk that the sponsor is required to maintain. The Agencies have proposed to establish a limitation ("sunset") for these prohibitions. As more fully discussed below, JPMorgan Chase commends the Agencies for development of the sunset, but believes that the sunset is excessive in duration.

As proposed, the sunset for a RMBS expires on or after the later of five years from the closing of the RMBS transaction or the date when the total unpaid principal balance of the underlying residential mortgages has been reduced to 25% of the total unpaid principal balance of those mortgages at the closing of the RMBS transaction, but in any event not later than seven years following the closing of the RMBS transaction. Using this standard, historical experience tells us that, except in extraordinary circumstances, the sunsets will not become effective for seven years. JPMorgan Chase believes that there is no policy or supervisory rationale that supports an anticipated sunset period of seven years. Both our own experience and broader industry experience indicate that mortgage loans are most likely to default due to underwriting factors in the first few years following origination, and defaults that occur thereafter are most likely to derive from post-origination factors that could not have been identified in the underwriting process (*e.g.*, defaults due to death, illness, divorce, etc.). That being the case, JPMorgan Chase believes that the sunset should be established three to four years from the closing of the RMBS transaction.

We believe that a three to four year sunset is particularly appropriate given the more conservative underwriting standards that lenders necessarily will employ as required by the federal ability-to-repay rules. In the wake of the Nation’s financial crises, lenders had already tightened their underwriting standards by 2009, and loans made in 2009 and subsequent years have exhibited much lower delinquency and default rates. The further tightening of underwriting as a consequence of the federal ability-to-repay rules would be anticipated to result in loans that are even safer.

Further, JPMorgan Chase believes that the recommended three to four year sunset derives support, by analogy, from the approach used by Fannie Mae and Freddie Mac relating to their sunset of representation and warranty liability for loans sold to those institutions. The Fannie/Freddie sunsets become effective at times when defaults resulting from the underwriting factors that constitute the basis of those representations/warranties are expected to have passed, which is analogous to the sunset under the Proposal. Under the Fannie/Freddie standard, for most mortgage loans where there are no 30-day late payments in the first 36 months following the sale of the mortgage, the sunset becomes effective at the 36-month point.

C. Provisions to Prevent the Loss of the QRM Exemption for the Inadvertent Inclusion of Certain Non-QRM Loans in the ABS

The Proposal contains provisions that will prevent the loss of the QRM exemption that could otherwise result from the inadvertent inclusion of certain non-QRM loans in the ABS. JPMorgan Chase concurs with this element of the Proposal. Notwithstanding all of the precautions that can be taken, it is invariable that some non-QRMs will unintentionally be included in some ABSs. The Agencies have proposed a reasonable and workable methodology for dealing with these situations, and JPMorgan Chase commends the Agencies for their pragmatic approach.

D. Seasoned Loans

The Proposal would exempt from the risk retention requirement any securitization transaction that is collateralized solely by servicing assets and by "seasoned loans." As in the case of the sunset issue discussed above, JPMorgan Chase commends the Agencies for their flexibility in proposing a seasoned loan exemption, but believes that the standards for qualification as a seasoned loan are unduly conservative.

To qualify for this exception, none of the loans may (i) have been modified since origination, or (ii) have been delinquent for 30 days or more. In the case of a RMBS, a "seasoned loan" means a loan that has been outstanding and performing for the longer of (a) a period of five years, or (b) until the outstanding principal balance of the loan has been reduced to 25% of the original principal balance. In any event, however, any residential mortgage loan that has been outstanding and performing for a period of at least seven years shall be deemed a "seasoned loan" for this purpose.

Historical experience tells us that virtually no mortgage loans will meet the 25% standard prior to seven years. Further, long before the seven year mark has been reached, our own experience and broader industry experience indicate that the credit risk associated with factors considered in the underwriting process will have passed. See the discussion in Part 2.B. of this letter, above. That being the case, there is no policy or supervisory rationale that supports an anticipated seasoned loan qualification period of seven years. Moreover, experience has shown that many loans that have experienced a modification or that have had a 30-day late payment nevertheless are safe and would be considered "seasoned loans" by any normal market definition. Accordingly, JPMorgan Chase recommends that a "seasoned loan" be defined by reference to the standards used by Fannie Mae and Freddie Mac for their sunset of representation and warranty liability for loans sold to those institutions. See Part 2.B. of this letter, above.

E. Blended QRM–Non-QRM ABSs

Section __.13 of the Proposal states that the QRM exemption will apply only if all the residential mortgages contained in the ABS consist of QRMs (with the exception of certain inadvertently included non-QRMs, as discussed in Part 2.C. of this letter, above). JPMorgan Chase believes that Section 941 of Dodd-Frank authorizes the Federal banking agencies and the SEC to allow the inclusion of non-QRM assets in an ABS without the loss of the QRM exemption for the ABS's QRMs, and that it is appropriate for those agencies to exercise this authority.

Section 941 of Dodd-Frank generally states that the risk retention requirement will apply to a QRM that is part of an ABS if one or more of the assets that collateralize the ABS are not QRMs. This requirement is set forth in new §15G(c)(1) of the Securities Exchange Act of 1934 ("Exchange Act"). However, Section 15G(e)(1) of the Exchange Act states that the Federal banking agencies and the SEC "may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to the risk retention requirement and prohibition on hedging under subsection (c)(1)." Thus, it is evident that the loss of the QRM exemption resulting from the blending of QRMs and non-QRMs in the same ABS (mandated by §15(G)(c)(1)) is subject to the overriding authority of the Federal banking agencies and the SEC to establish exemptions, exceptions, or adjustments relating to that anti-blending principle (as set forth in §15(G)(e)(1)).

Section 15G(e)(2) of the Exchange Act sets forth the standards for these exemptions, exceptions, or adjustments: The exemptions, exceptions, or adjustments must "(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; 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."

An exception that allows the efficient blending of non-QRMs in a QRM ABS can, in fact, be fashioned to meet the §15G(e)(2) standards. Specifically, JPMorgan Chase recommends that the final regulation of the Federal banking agencies and SEC allow the inclusion of other high quality non-QRM assets in a QRM ABS, with the QRMs being exempt from risk retention and the non-QRM assets being subject to risk retention unless otherwise exempt. Such a blended ABS will, by definition, meet the high quality underwriting standards contemplated by Section 15G(e)(2)(A) of the Exchange Act. Moreover, allowing such a blended ABS will facilitate the formation of ABSs by sponsors that otherwise are unable to generate the critical mass of QRMs alone that would be necessary to establish ABSs consisting solely of QRMs. The ability of more sponsors to establish securitizations with a blend of QRMs and other high quality assets will encourage appropriate risk management practices, improve the access of consumers and businesses to credit on reasonable terms, and otherwise be in the public interest and for the protection of investors, thereby meeting the standards contemplated by Section 15G(e)(2)(B) of the Exchange Act.

However, if this approach is not acceptable, then we urge that the final regulation allow the inclusion of other exempt assets, such as seasoned loans (to be defined as discussed in Part 2.D. of this letter, above), in the ABSs that include QRMs, with all such assets being exempt from risk retention. Inasmuch as an ABS consisting entirely of QRMs, and an ABS consisting entirely of other exempt assets, will each be exempt from risk retention requirements, it logically follows that an ABS consisting entirely of a blend of QRMs and other exempt assets should be regarded as equally safe and therefore should be exempted from risk retention requirements. This more conservative approach to blending will also meet the §15G(e)(2) standards discussed above.

If the Agencies should decide to adopt the QM-plus alternative QRM definition, then it will be even more essential that the final regulation of the Federal banking agencies and SEC allow the blended ABSs described above. The narrower QM-plus definition will severely restrict the number of loans that qualify as QRMs, which means that it will be extremely difficult for any potential sponsor to generate the critical mass of QRMs alone that will be necessary to establish ABSs consisting solely of QRMs. Consequently, if the QM-plus alternative is adopted, allowing blended ABSs will be critical to the reestablishment of a viable private RMBS market.

3. COMMERCIAL MORTGAGE-BACKED SECURITIES

JPMorgan Chase is a leading player in the CMBS market. Through several subsidiaries, JPMorgan Chase is a lender, loan seller, issuer, underwriter/placement agent, dealer and investor in the CMBS markets. While we have some comments that we will discuss more fully below, we commend the Agencies for making significant improvements to the risk retention options and requirements as they relate to CMBS and specifically multi-loan "conduit" transactions and for the elimination of PCCRA. The CMBS market has recovered significantly from the market crisis of 5 years ago and these revisions will go a long way towards maintaining that growth and resurgence. Our comments below relate to some additional changes we feel will be necessary to ensure the final rules do not disrupt the CMBS market in a significantly negative way. Our goal is not the elimination of risk retention but modifications to fit the actual performance and historical activity in the CMBS market. We feel this will still result in meaningful risk retention without disrupting the flow of credit in commercial real estate.

In addition to our comments below, we participated in the comment letter submitted by CREFC and endorse the positions taken in that letter.

In our discussion, we will reference the below default history as presented in Exhibit 1 as it relates to both conduit CMBS and CMBS transactions that are backed by a loan to a single borrower secured by a single asset or multiple assets (referred to as "Single Borrower/Single Credit" or "<u>SBSC</u>" transactions).

Exhibit 1

Sector	Current 60+ DLQ Rate	Cumulative Loss Rate
CMBS (Conduit + SASB)	6.98%	2.67%
Conduit	7.55%	2.88%
SASB	0.00%	0.20%

Term Length	Original Balance	Losses	Loss Rate
5-Yr	$112,622,174,815	$ 2,623,522,644	2.33%
7-Yr	$ 65,104,172,380	$ 1,485,193,101	2.28%
10-Yr	$686,176,843,746	$ 19,574,434,283	2.85%
15+ Yr	$ 63,197,947,409	$ 1,070,450,366	1.69%
Total	$927,101,138,351	$ 24,753,600,394	2.67%

Source: Trepp, LoanPerformance, Intex, S&P LCD

Note 1: CMBS and Non-agency 60+ DLQ Rate includes Foreclosure/REO

Note 2: Non-Agency QM requirements include DTI <= 43%, no neg. am. or IO loans, full doc, term <=30yrs, , no prepay penalties

Note 3: Data range from 1997 - July 2013

A. QCRE Loans

One of our most significant concerns with the Proposal is that the definition of a QCRE for purposes of an exemption from the risk retention requirements continues to be too restrictive. We estimate that approximately 70% by principal balance of jumbo single-family residential mortgage loans backing new issue non-Agency RMBS today qualify for the QRM definition in the Proposal, while only 2.54% of all CMBS loans originated in the last 10 years fit the current QCRE definition, and looking at loans originated since the reopening of the CMBS market in 2010 (often referred to as CMBS 2.0), only 5.51% would qualify, and of the loans originated in 2013 (through July) only 6.51% of loans would qualify (each of these percentages are by principal balance). This relatively small percentage of QCRE loans is due mostly to the combination of the debt service coverage ratio ("DSCR") and amortization parameters in the proposed definition.

The current rule is unduly punitive to the point of making QCRE irrelevant and mostly unusable. Even the highest quality bank and insurance company originated loans cannot fit into the narrow parameters of the definition given those parameters do not adhere to commercial real estate business practices of shorter investment holding periods and significant equity investments of 30%. Additionally, the current QCRE definition will only get more restrictive if interest rates and mortgage rates rise. Given that we have risen above the historical low in commercial real estate coupon rates in 2012, we would argue that it would be shortsighted to codify a standard that cannot be met today and will get more difficult as CMBS rates revert to the historical average of 5.58%.

To illustrate how restrictive the current QCRE definition is, JPMorgan examined the population of all CMBS loans originated since 2003 that would be eligible as QCRE loans as currently defined in the Proposal, as well as default and delinquency data for such loans. Please see Exhibit 2 below:

Exhibit 2

	All Conduit CMBS					
	Total					
Year (a)	MF Count	MF Balance ($mm)	Non-MF Count	Non-MF Balance	Count	Balance ($mm)
2003	1,499	$ 9,600.03	4,393	$ 43,219.33	5,892	$ 52,819.36
2004	1,524	$ 11,452.96	5,233	$ 60,082.11	6,757	$ 71,535.07
2005	2,090	$ 20,491.13	8,133	$111,964.91	10,223	$ 132,456.04
2006	2,218	$ 24,150.52	9,582	$136,261.62	11,800	$ 160,412.14
2007	2,017	$ 31,505.82	9,528	$156,824.01	11,545	$ 188,329.83
2008	121	$ 1,078.64	708	$ 9,608.83	829	$ 10,687.47
2010	7	$ 106.27	213	$ 5,278.49	220	$ 5,384.77
2011	100	$ 1,319.08	876	$ 23,168.86	976	$ 24,487.94
2012	177	$ 2,273.85	1,557	$ 29,880.76	1,734	$ 32,154.60
2013	209	$ 2,619.14	1,540	$ 29,978.99	1,749	$ 32,598.14
Total	9,962	$ 104,597.44	41,763	$606,267.91	51,725	$ 710,865.35

(a) No CMBS issuance in 2009.

(b) MF: Multifamily

	QCRE Eligible					
	Count			Balance ($mm)		
Year (a)	MF Loans	Non-MF Loans	Aggregate	MF Loans	Non-MF Loans	Aggregate
2003	243	434	677	$ 871.95	$ 2,390.44	$ 3,262.39
2004	172	291	463	$ 715.33	$ 2,044.85	$ 2,760.18
2005	171	307	478	$ 790.28	$ 1,996.22	$ 2,786.50
2006	172	247	419	$ 736.66	$ 1,285.13	$ 2,021.79
2007	86	152	238	$ 354.92	$ 1,114.86	$ 1,469.78
2008	4	9	13	$ 7.57	$ 54.70	$ 62.28
2010	2	9	11	$ 16.58	$ 367.91	$ 384.50
2011	14	50	64	$ 125.18	$ 673.30	$ 798.48
2012	28	173	201	$ 361.11	$ 2,027.08	$ 2,388.18
2013	29	170	199	$ 264.27	$ 1,859.04	$ 2,123.30
Total	921	1,842	2,763	$ 4,243.84	$ 13,813.54	$ 18,057.38

(a) No CMBS issuance in 2009.

(b) MF: Multifamily

	Eligible Percentages					
	Count			Balance		
Year (a)	MF Loans	Non-MF Loans	Aggregate	MF Loans	Non-MF Loans	Aggregate
2003	16.21%	9.88%	11.49%	9.08%	5.53%	6.18%
2004	11.29%	5.56%	6.85%	6.25%	3.40%	3.86%
2005	8.18%	3.77%	4.68%	3.86%	1.78%	2.10%
2006	7.75%	2.58%	3.55%	3.05%	0.94%	1.26%
2007	4.26%	1.60%	2.06%	1.13%	0.71%	0.78%
2008	3.31%	1.27%	1.57%	0.70%	0.57%	0.58%
2010	28.57%	4.23%	5.00%	15.60%	6.97%	7.14%
2011	14.00%	5.71%	6.56%	9.49%	2.91%	3.26%
2012	15.82%	11.11%	11.59%	15.88%	6.78%	7.43%
2013	13.88%	11.04%	11.38%	10.09%	6.20%	6.51%
Total	9.25%	4.41%	5.34%	4.06%	2.28%	2.54%

(a) No CMBS issuance in 2009.

(b) MF: Multifamily

Delinquency Performance

Legacy Loans (a)	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	12.24%	3.12%	3.07%	6.90%	4.64%	6.16%
Overall Pool	18.93%	21.64%	28.56%	28.17%	17.95%	21.92%

CMBS 2.0 Loans (b)	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Overall Pool	0.00%	0.13%	0.32%	0.00%	0.01%	0.05%

All Conduit Loans	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	8.72%	2.62%	2.59%	3.90%	3.42%	4.38%
Overall Pool	15.91%	19.29%	26.86%	22.96%	14.96%	19.01%

Loss amount as a % of

Legacy Loans (a)	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	0.49%	0.48%	0.50%	1.39%	0.45%	0.71%
Overall Pool	3.58%	2.53%	4.02%	4.19%	2.14%	3.17%

CMBS 2.0 Loans (b)	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Overall Pool	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

All Conduit Loans	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	0.35%	0.40%	0.42%	0.79%	0.33%	0.51%
Overall Pool	3.01%	2.26%	3.78%	3.41%	1.79%	2.75%

(a) Legacy loans represents the period of 1997 - 2008
(b) CMBS 2.0 represents the period of 2010 - present

We would like to highlight the following in the above exhibit.

1) Since 2003, the percentage of loans that qualify as QCRE per the Proposal is:
    a. Count = 5.34%
    b. Balance = 2.54%
2) Since the reopening of the CMBS market in 2010 (CMBS 2.0), the percentage of loans that qualify is:
    a. Count = 9.06%
    b. Balance = 5.51%
3) The performance history of the loans which meet the QCRE definition is:
    a. Delinquency = 4.38%
    b. Loss Severity = 0.51%

We would note that while the performance history of the proposed QCRE eligible loans has been stronger than non-QCRE loans, it has not been as strong as one would expect for significantly "higher quality" loans. While a delinquency rate of 4.38% is relatively low, it is still high compared to the low of 0.29% achieved for CMBS loans in the first quarter of 2007. The modest adjustments we propose below to the QCRE definition will actually result in the QCRE loss severity ***decreasing*** by 5 basis points to 0.45% and a modest increase in delinquency rate to approximately 6.57% that is still significantly lower than for non-QCRE loans

JPMorgan would note that the fixed DSCR constraint of 1.5 in the Proposal introduces capitalization rate sensitivity to both lenders and borrowers where none currently exists. If we assume a market coupon of a CMBS loan is currently 5.00%, the maximum proceeds that can be lent will vary based on the capitalization rate, or ratio between income and value. Lower capitalization rates are indicative of properties with more stable cash flows and higher valuation markets such as Washington, DC and New York City. Higher capitalization rates indicate greater cash flow variability due to lower population density, less robust job growth, and other factors which are found in smaller cities and towns.

Exhibit 3

Cap Rate (%)	Max LTV	Typical markets			
8.5	65.0%	Gainesville	Odessa	Peoria	Boise
7.5	65.0%	Pittsburgh	Knoxville	Salt Lake City	Fresno
6.5	61.8%	Chicago	Dallas	Atlanta	Phoenix
5.5	52.3%	NYC	D.C.	Boston	L.A.

In the above exhibit, lower capitalization rates result in the lender reducing proceeds to the borrower in order to not violate the 1.5 DSCR limit in the proposed QCRE definition. In effect, the proposed QCRE definition will inadvertently limit CMBS lending more in primary markets that are usually characterized as having the most stable cash flows and where demand and need for credit is the highest.

In addition, the proposed QCRE definition introduces interest rate sensitivity where none currently exists. Once again, given the fixed DSCR constraint of 1.5, as rates increase lenders will have to reduce proceeds to meet the proposed QCRE definition. The below exhibit demonstrates the impact of interest rates on a borrower's loan proceeds.

Exhibit 4

Maximum LTV for a 25yr amortizing loan with this cap rate and loan rate

		Loan Rate								
			All-time low			*Current*		*Long term Avg*		
		3.0%	3.5%	4.0%	4.5%	5.0%	5.5%	6.0%	6.5%	7.0%
Cap rate	4.5%	52%	49%	47%	44%	42%	40%	38%	37%	35%
	5.0%	58%	55%	52%	49%	47%	45%	43%	41%	39%
	5.5%	64%	60%	57%	54%	52%	49%	47%	45%	43%
	6.0%	65%	65%	62%	59%	56%	54%	51%	49%	47%
	6.5%	65%	65%	65%	64%	61%	58%	55%	53%	50%
	7.0%	65%	65%	65%	65%	65%	63%	60%	57%	54%
	7.5%	65%	65%	65%	65%	65%	65%	64%	61%	58%
	8.0%	65%	65%	65%	65%	65%	65%	65%	65%	62%
	8.5%	65%	65%	65%	65%	65%	65%	65%	65%	65%
	9.0%	65%	65%	65%	65%	65%	65%	65%	65%	65%

Shaded area is where loan DSCR becomes constraint and lowers the effective maximum LTV

Maximum LTV for a 30yr amortizing loan with this cap rate and loan rate

		Loan Rate								
			All-time low			*Current*		*Long term Avg*		
		3.0%	3.5%	4.0%	4.5%	5.0%	5.5%	6.0%	6.5%	7.0%
Cap rate	4.5%	59%	55%	52%	49%	46%	44%	41%	39%	37%
	5.0%	65%	61%	58%	54%	51%	48%	46%	44%	41%
	5.5%	65%	65%	63%	60%	56%	53%	50%	48%	45%
	6.0%	65%	65%	65%	65%	61%	58%	55%	52%	50%
	6.5%	65%	65%	65%	65%	65%	63%	60%	57%	54%
	7.0%	65%	65%	65%	65%	65%	65%	64%	61%	58%
	7.5%	65%	65%	65%	65%	65%	65%	65%	65%	62%
	8.0%	65%	65%	65%	65%	65%	65%	65%	65%	65%
	8.5%	65%	65%	65%	65%	65%	65%	65%	65%	65%
	9.0%	65%	65%	65%	65%	65%	65%	65%	65%	65%

Shaded area is where loan DSCR becomes constraint and lowers the effective maximum LTV

As illustrated above, this sensitivity is magnified with the 25 year amortization restraint. Considering the current low artificial interest rate environment that is expected to dissipate as the economy recovers, issuers will not be able to offer borrowers the same leverage as today solely due to the rate environment which is unrelated to property performance.

The Proposal also separated multifamily loans from the main QCRE definition and provided a less stringent threshold for those loans to be eligible. JPMorgan would point out that multifamily loans represent only a small percentage of CMBS universe. As Exhibit 2 demonstrates, the balance of multifamily loans that would qualify as QCRE as compared to all CMBS loans securitized is 0.60%. Furthermore as per Exhibit 2, multifamily loans do not demonstrate better performance history from core CMBS property types such as Office, Retail or Industrial. However, JPMorgan does believe that lodging loans should have a stricter QCRE eligibility threshold due to their historical performance history. Lodging loans are subject to increased cashflow volatility resulting from their high correlation to the economy and availability of disposable income.

Given the low historical delinquency and default of CMBS, as illustrated in Exhibit 1, we believe there is justification for broadening the QCRE definition so that the population that would qualify would be more analogous to the proposed QRM definition for RMBS. JPMorgan would recommend the following modifications to the QCRE definition:

1. **Elimination of the 10 year minimum term requirement**. The default and delinquency data shown in Exhibit 1 demonstrates that term does not materially factor in or increase the likelihood of a loss for CMBS investors and may be inversely correlated. CMBS borrowers choose the term of the loan based on their individual investment horizon and the lender responds to that request. The borrower's objective and strategy influences their decision on which term to choose. Unlike the residential mortgage market, which relies on employment and an owner occupant, commercial real estate is frequently repaid by sale of the asset and or refinance as rental growth increases or decreases the value of the property. We do not believe that limiting the QCRE term is mandated by the requirements of Dodd-Frank and we see no benefit for CMBS bond investors in such a restriction, a view shared by our business units that invest in CMBS.

2. **DSCR, Amortization and Maximum Loan-to-Value Ratio ("LTV")**. JPMorgan would further recommend that the following parameters in the QCRE definition be revised as follows:
    a. For all commercial real estate other than lodging:
        i. Minimum DSCR: 1.25, calculated on the lower of in-place income or underwritten cashflows (we would recommend that this be replaced by an industry-defined standard for net operating income in the event that is developed by CREFC)
        ii. 30 year or less amortization
        iii. Maximum LTV: 65.0%, or for loans where there is an interest-only period, 55%
    b. For lodging loans:
        i. Minimum DSCR: 1.5, calculated on the lower of in-place income or underwritten cashflows (we would recommend that this be replaced by an industry-defined standard for net operating income in the event that is developed by CREFC)
        ii. 25 year or less amortization
        iii. Maximum LTV: 60.0%, or for loans where there is an interest-only period, 50%

JPMorgan believes that these relatively modest changes to QCRE would permit a more reasonable number of loans to qualify, while still preserving the regulatory mandate of safe and high quality loans. The following exhibits show the historical population that would now be QCRE eligible with our proposed changes and the performance history of this subset.

Exhibit 5

	All Conduit CMBS					
			Total			
Year (a)	LO Count	LO Balance ($mm)	Non-LO Count	Non-LO Balance	Count	Balance ($mm)
2003	92	$ 1,368.59	5,800	$ 51,450.77	5,892	$ 52,819.36
2004	139	$ 2,107.20	6,618	$ 69,427.88	6,757	$ 71,535.07
2005	528	$ 9,449.65	9,695	$123,006.39	10,223	$ 132,456.04
2006	987	$ 16,852.86	10,813	$143,559.28	11,800	$ 160,412.14
2007	902	$ 19,212.57	10,643	$169,117.26	11,545	$ 188,329.83
2008	91	$ 1,528.33	738	$ 9,159.13	829	$ 10,687.47
2010	9	$ 150.57	211	$ 5,234.20	220	$ 5,384.77
2011	95	$ 2,350.97	881	$ 22,136.97	976	$ 24,487.94
2012	253	$ 4,257.94	1,481	$ 27,896.66	1,734	$ 32,154.60
2013	263	$ 4,686.65	1,486	$ 27,911.49	1,749	$ 32,598.14
Total	3,359	$ 61,965.33	48,366	$648,900.02	51,725	$ 710,865.35

(a) No CMBS issuance in 2009.

(b) LO: Lodging

	QCRE Eligible					
	Count			Balance ($mm)		
Year	LO Loans	Non-LO Loans	Aggregate	LO Loans	Non-LO Loans	Aggregate
2003	36	1,526	1,562	$ 534.02	$ 13,044.97	$ 13,578.99
2004	42	1,424	1,466	$ 695.65	$ 12,446.71	$ 13,142.36
2005	63	1,627	1,690	$ 1,151.20	$ 15,369.21	$ 16,520.41
2006	109	1,671	1,780	$ 1,415.86	$ 18,989.20	$ 20,405.06
2007	59	1,145	1,204	$ 881.10	$ 14,402.26	$ 15,283.35
2008	5	88	93	$ 43.61	$ 719.63	$ 763.24
2010	2	122	124	$ 32.43	$ 3,537.96	$ 3,570.39
2011	32	305	337	$ 744.77	$ 8,919.89	$ 9,664.66
2012	81	468	549	$ 1,145.28	$ 7,567.44	$ 8,712.71
2013	54	453	507	$ 815.22	$ 6,998.32	$ 7,813.54
Total	**483**	**8,829**	**9,312**	**$ 7,459.14**	**$ 101,995.58**	**$ 109,454.72**

(a) No CMBS issuance in 2009

(b) LO: Lodging

Eligible Percentages						
	Count			Balance		
Year	LO Loans	Non-LO Loans	Aggregate	LO Loans	Non-LO Loans	Aggregate
2003	39.13%	26.31%	26.51%	39.02%	25.35%	25.71%
2004	30.22%	21.52%	21.70%	33.01%	17.93%	18.37%
2005	11.93%	16.78%	16.53%	12.18%	12.49%	12.47%
2006	11.04%	15.45%	15.08%	8.40%	13.23%	12.72%
2007	6.54%	10.76%	10.43%	4.59%	8.52%	8.12%
2008	5.49%	11.92%	11.22%	2.85%	7.86%	7.14%
2010	22.22%	57.82%	56.36%	21.54%	67.59%	66.31%
2011	33.68%	34.62%	34.53%	31.68%	40.29%	39.47%
2012	32.02%	31.60%	31.66%	26.90%	27.13%	27.10%
2013	20.53%	30.48%	28.99%	17.39%	25.07%	23.97%
Total	14.38%	18.25%	18.00%	12.04%	15.72%	15.40%

(a) No CMBS issuance in 2009

(b) LO: Lodging

Delinquency Performance

Legacy Loans (a)	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	12.64%	6.69%	12.12%	5.21%	5.40%	8.97%
Overall Pool	18.93%	21.64%	28.56%	28.17%	17.95%	21.92%

CMBS 2.0 Loans (b)	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	0.00%	0.16%	0.00%	0.00%	0.00%	0.04%
Overall Pool	0.00%	0.13%	0.32%	0.00%	0.01%	0.05%

All Conduit Loans	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	8.75%	5.33%	10.67%	3.30%	3.74%	6.57%
Overall Pool	15.91%	19.29%	26.86%	22.96%	14.96%	19.01%

Loss amount as a % of original balance

Legacy Loans (a)	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	1.00%	0.34%	0.39%	0.45%	0.45%	0.61%
Overall Pool	3.58%	2.53%	4.02%	4.19%	2.14%	3.17%

CMBS 2.0 Loans (b)	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Overall Pool	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

All Conduit Loans	Retail	Office	Multifamily	Lodging	Other	Total
QCRE Loans	0.70%	0.27%	0.34%	0.28%	0.31%	0.45%
Overall Pool	3.01%	2.26%	3.78%	3.41%	1.79%	2.75%

(a) Legacy loans represents the period of 1997 - 2008
(b) CMBS 2.0 represents the period of 2010 - present

As illustrated above, since 2003 the percentage of loans that would now qualify as QCRE with our proposed changes is:

a. Count = 18.0%
b. Balance = 15.4%

Since the reopening of the CMBS market in 2010, the percentage of loans that would now qualify is:

a. Count = 32.4%
b. Balance = 31.5%

The performance history of a QCRE loan that fits our proposed definition would be:

a. Delinquency = 6.57%
b. Loss Severity = 0.45%

JPMorgan believes these revised QCRE metrics are more in line with the proposed QRM for RMBS and, more importantly, will not result in any material increase in risk for CMBS investors, a view shared by our business units that invest in CMBS. Furthermore, the above metrics will eliminate much of the sensitivity to both interest rates and capitalization rates that the proposed QCRE requirements introduce. We urge the Agencies to make these important changes.

B. Single Borrower/Single Credit Transactions

The Proposal did not provide any specific risk retention option for "non-conduit" CMBS securitizations, primarily SBSC CMBS. In the Proposal, the Agencies stated that they "do not believe that there are significant differences between "conduit" and "non-conduit" CMBS to warrant a special exemption for "non-conduit" CMBS." With respect to SBSC CMBS, we respectfully disagree. In our view, this oversight is one of the more significant issues we have with the Proposal because it ignores a very important sector of the CMBS market which uses a different structure than conduit CMBS deals and provides a critical source of funding for real estate borrowers across the country. We agree with the Agencies that non-conduit CMBS do not necessarily deserve a special exemption (unless they otherwise meet the definition of a QCRE). But in order to not disrupt the market for these transactions, the Agencies should understand that non-conduit CMBS, particularly SBSC CMBS, have different structures and characteristics that do warrant providing them with more flexibility in meeting the risk retention requirements.

SBSC CMBS transactions are unique in that they too big to be pooled together for diversity benefit and purchased using statistical analysis, as with conduit CMBS. But these transactions are well known enough to attract investors on an independent basis. These CMBS loans, which average in size of approximately $528 million, are backed by one major asset or one cross-collateralized group of homogeneous assets which are securitized on a one-off basis. Recent examples would be Tysons Galleria Mall in McLean Virginia and 375 Park Avenue in New York City (securitized by other sponsors) or the $3.5 billion Hilton Hotel portfolio loan led by JPMorgan. These loans have their own individual offering memorandum with very robust disclosure on the asset, rent roll, cash flow history and appraisal information. Investors in SBSC CMBS are able to perform more in-depth loan-level analysis to a degree not practical or even necessary in conduit CMBS offerings. These SBSC bonds are offered to institutional investors similarly to other large corporate bond offerings.

The loans backing SBSC CMBS generally are 3-15 years in length and are offered in both fixed rate and floating rate format. They generally are rated by multiple rating agencies down to a level of BB-/Ba3 or better. The borrowers for these deals are large experienced real estate institutions that own the country's most high profile Class A real estate. The assets tend to be located in primary markets that have stabilized cash flows. Regional banks and even many insurance companies have difficulty lending on these assets due to their large size and therefore they must be syndicated to multiple lenders or securitized for bond investors. The SBSC CMBS transactions are both an efficient form of financing for the larger borrowers but also allow investors to analyze loans in detail and add exposure to real estate that they would not be able to do by themselves. For these reasons, JPM believes that the final risk retention rules should be modified to accommodate SBSC.

A summary of the CMBS SBSC transactions since 2009 is detailed in Exhibit 6 below.

Exhibit 6

CMBS 2.0 Single Borrower/Single Credit Deals

Mortgage Loan Characteristics

	All Loans
Number of loans……	66
Aggregate outstanding principal balance ($mm)……	$34,857
Range of current loan principal balances ($mm)……	$125 to $2,520
Average current loan principal balances ($mm)……	$528
Range of Initial terms to maturity……	24 months to 180 months
Range of max extension term……	24 months to 180 months
Weighted average max extension term……	91
Range of loan rates……	2.23690% to 7.50000%
Weighted average Loan rate……	4.2792%
Range of Initial loan-to-value ratios……	24.6% to 66.7%
Weighted average loan-to-value ratio……	50.9%
Range of current DSCR……	1.45 to 6.49
Weighted average current DSCR……	2.77
Range of NOI debt yields……	7.80% to 20.19%
Weighted average NOI debt yields……	13.08%

Deal Name	Deal Vintage	Deal Name	Deal Vintage	Deal Name	Deal Vintage
JPMCC 2013-ALC	2013	MSC 2013-WLSR	2013	JPMCC 2012-HSBC	2012
COMM 2013-300P	2013	GSMS 2013-KING	2013	UBSBM 2012-WRM	2012
BBCMS 2013-TYSN	2013	GSMS 2013-KYO	2013	JPMCC 2012-WLDN	2012
STWD 2013-FV1	2013	RBSCF 2013-SMV	2013	GSMS 2012-ALOH	2012
CGBAM 2013-BREH	2013	ESA 2013-ESH	2013	FMBT 2012-FBLU	2012
COMM 2013-THL	2013	ESA 2013-ESH5	2013	WTC7 2012-7WTC	2012
JPMCC 2013-JWRZ	2013	ESA 2013-ESH7	2013	BMLDB 2012-OSI	2012
CGCMT 2013-375P	2013	ESA 2013-ESFL	2013	COMM 2012-9W57	2012
ICOT 2013-IRV	2013	QCMT 2013-QCA	2013	COMM 2011-STRT	2011
WFCM 2013-BTC	2013	GSMS 2012-BWTR	2012	JPMCC 2011-PLSD	2011
GSMS 2013-PEMB	2013	GSMS 2012-TMSQ	2012	JPMCC 2011-CCHP	2011
COMM 2013-SFS	2013	COMM 2012-MVP	2012	WFDB 2011-BXR	2011
BAMLL 2013-WBRK	2013	JPMCC 2012-PHH	2012	COMM 2011-THL	2011
DEL 2013-HDC	2013	BAMLL 2012-PARK	2012	BAMLL 2011-FSHN	2011
WFCM 2013-120B	2013	BBUBS 2012-TFT	2012	GSMS 2011-ALF	2011
COMM 2013-WWP	2013	VNDO 2012-6AVE	2012	ACRE 2010-ARTA	2010
GSMS 2013-NYC5	2013	MOTEL 2012-MTL6	2012	ESA 2010-ESHA	2010
CGRBS 2013-VN05	2013	BBUBS 2012-SHOW	2012	JPMCC 2010-CNTR	2010
COMM 2013-GAM	2013	MSBAM 2012-CKSV	2013	VNO 2010-VNO	2010
MSC 2013-ALTM	2013	MSBAM 2012-CKSV1	2012	OBP 2010-OBP	2010
LCCM 2013-GCP	2013	MSBAM 2012-CKSV2	2012	JPMCC 2009-IWST	2009
CGCMT 2013-SMP	2013	COMM 2012-LTRT	2012	BALL 2009-FDG	2009
BWAY 2013-1515	2013	MSC 2012-STAR	2012	DDR 2009-DDR1	2009
BAMLL 2012-CLRN	2012	GSMS 2012-SHOP	2012		

JPMorgan would note that the broader definition of QCRE that we are recommending, as discussed above, would permit all but 3 of the above loans to qualify. In particular, ***the elimination of the 10 year minimum term is critical for SBSC loans*** given that the vast majority of the loans listed above would not meet that requirement. But without that limitation alone, most of the above loans would be able to qualify without any measurable increase in risk (as we discussed above). That would be a significant benefit to this market as these transactions do not typically issue non-investment grade subordinated classes or unrated first loss classes and would not be able to utilize the B Piece Buyer option under the Proposal. If sponsors of SBSC transactions need to retain risk, it will eventually impede these borrowers' ability to acquire and refinance the country's largest and most significant properties due to the sponsors' balance sheet capacity limits. This would likely just increase cost of borrowing with no discernible credit benefit. Furthermore, requiring these transactions to restructure in order to permit them to utilize the B Piece Buyer option would also introduce complexities and economic inefficiencies that are not necessary. The slightly more expansive definition of QCRE we propose above would be the best way to ensure this important sector of the CMBS market is not negatively affected. And such an expansion is completely warranted given the relatively excellent performance history of this sector.

As Exhibit 1 demonstrates, the performance history of SBSC CMBS far exceeds the performance of conduit CMBS. While we continue to note that CMBS has lower default severity and delinquency than other securitized products, there are no SBSC deals that are currently delinquent and since 1997, there is only a 0.20% loss rate for the $34.9 billion SBSC population. The credit characteristics for SBSC are far more conservative than conduit deals, specifically lower LTVs and higher DSCRs.

Exhibit 7 below illustrates the collateral characteristics of these deals.

Exhibit 7

Sector	Current 60+ DLQ Rate	Cumulative Loss Rate
CMBS (Conduit + SASB)	6.98%	2.67%
Conduit	7.55%	2.88%
SASB	0.00%	0.20%
Non-agency RMBS QM Subset	23.10%	6.41%

Term Length	Original Balance	Losses	Loss Rate
5-Yr	$112,622,174,815	$ 2,623,522,644	2.33%
7-Yr	$ 65,104,172,380	$ 1,485,193,101	2.28%
10-Yr	$686,176,843,746	$ 19,574,434,283	2.85%
15+ Yr	$ 63,197,947,409	$ 1,070,450,366	1.69%
Total	$927,101,138,351	$ 24,753,600,394	2.67%

Source: Trepp, LoanPerformance, Intex, S&P LCD

Note 1: CMBS and Non-agency 60+ DLQ Rate includes Foreclosure/REO

Note 2: Non-Agency QM requirements include DTI <= 43%, no neg. am. or IO loans, full doc, term <=30yrs, , no prepay penalties

Note 3: Data range from 1997 - July 2013

C. Multiple B Piece Buyers

We commend the Agencies for revising the Original Proposal to permit up to two B Piece Buyers in the third party retention option. However, we do not agree with the requirement that these holders be limited to just pari passu holders. Instead, we recommend that the Agencies permit "horizontal" holders such that one B Piece Buyer can be subordinated to the other. As long as both holders together hold the required retention and each of them individually meets all the requirements for B Piece Buyers specified in the final rule (including the requirement to perform due diligence, the required hold period and hedging restrictions), this should not diminish the effect of the risk retained vis-a-vis the senior holders, a view shared by our business units that invest in CMBS.

D. Allocation to the Originators

JPMorgan Chase continues to have concerns with the limitation of allocation of retention to originators that contribute 20% or more of the loans in the transaction. This limitation disadvantages smaller originators since it may result in sponsors avoiding contributions from originators below the 20% threshold. The 20% limitation should be lowered to 10%.

E. Loan Participations

We would propose that another alternative risk retention option that would be beneficial for certain non-conduit CMBS transactions that are not currently structured with a B Piece Buyer would be the retention of a 5% pari passu participation in each mortgage loan. Such a participation interest would be the most exact alignment of interests with investors and would be relatively simple to achieve given that loan participations are very common in the commercial loan market.

In the Proposal, the agencies stated that they considered allowing for loan participations as an option to satisfy the risk retention requirements, as requested by a number of commenters, but that they ultimately determined that there would be little to no economic benefit for allowing this option because "the option is currently not used by the market and would unlikely be used". We respectfully disagree. Loan participations are a common method used to sell interests in commercial loans, including commercial mortgage loans. We feel that this option would be a viable alternative for certain CMBS sponsors and one that would fully achieve the goals of Dodd-Frank. We respectfully disagree with the agencies assertion that the costs and benefits of this option are not an improvement over the now proposed standard risk retention option. On the contrary, this alternative approach of a pari passu participation interest is one that is extremely common for large, commercial loan transactions, very easy to achieve and one that fully aligns the sponsor's interest with those of investors (which is exactly what loan participations, and the active market in such, was created to achieve). This alternative would provide a benefit to certain sponsors of non-conduit CMBS transactions that, as currently structured, would not be able to utilize the B Piece Buyer option.

4. AUTO ABS

JPMorgan Chase, through its various subsidiaries and lines of business, is an active participant in the automobile loan industry, ranging from being an originator and servicer of automobile loans, to being an issuer, underwriter and investor in asset-backed securities secured by such automobile loans ("Auto ABS").

As an auto loan originator and servicer, JPMorgan Chase originates and services all of its automobile loans in accordance with the same criteria and procedures, which we believe to be consistent with the highest industry standards, regardless of whether a loan is to be securitized or not. None of JPMorgan Chase's auto loan securitizations have experienced any principal losses or missed interest payments to investors. The strong credit performance seen in JPMorgan Chase's auto loan securitizations is consistent with the overall experience of the Auto ABS market. The Auto ABS market continues to be a stable and vibrant sector of the securitized capital markets as evidenced by issuers' continued reliance on the market as a core funding option and investors' continued willingness to invest in Auto ABS at reasonable pricing levels. While we agree in principle with the concept of risk retention, there are several critical modifications required to make the Proposal practical and workable while maintaining the vibrancy of the market for Auto ABS.

JPMorgan Chase supports certain key positions and rationale (as described below) contained within the SFIG and the SIFMA comment letters with respect to the Proposal and its application to automobile loans and Auto ABS.

A. Qualifying Automobile Loans

We welcome some of the changes to the requirements for the QAL exemption. These changes include expanding allowable loan term for QALs (and thereby eliminating the distinction between new and used vehicles); eliminating the need for physical possession of the title (so long as state law requirements are met); and reducing the down payment requirement from 20% to 10% (and eliminating the distinction between new and used vehicles). Some of these changes better reflect current industry practices.

Despite these changes, the QAL criteria, as currently proposed, are not consistent with our current automobile loan origination practices, and, as a result, we would not be able to use the qualifying auto loan exemption contained in the Proposal. Moreover, we do not expect any automobile loan originator that currently originates automobile loan pools to meet the exceedingly stringent requirements set forth in the Proposal. We strongly feel that the Proposal fails to consider the numerous unique aspects of the automobile loan origination process. The QAL criteria of the Proposal, without significant clarification and modification, will not be useful to any auto loan originator. The resulting risk retention requirements will impose increased costs and administrative burden on issuers of Auto ABS, which could discourage new securitization issuances and stifle liquidity for auto lenders, auto makers, auto dealerships and all the related micro economies, and, in the end, negatively impact the affordability or availability of credit to consumers.

B. Representative Pool

While the representative pool option in the Original Proposal was unworkable, we would be supportive of a simplified representative pool risk retention mechanism consistent with the FDIC Safe Harbor which requires sponsors to retain a representative sample of the securitized auto loans. To ensure the representative samples are indeed representative of the securitized loans, sponsors can randomly select the sample from a larger pool of similar loans which are eligible for securitization. This approach would allow the implementation of risk retention in a form that has been acceptable to market participants for several years (a number of securitization sponsors have adopted this approach with minimal disruption), without significantly impacting sponsors, investors or current standard market practices.

C. Maintain Core Transaction Structure

Auto ABS generally has experienced sound historical performance and strong demand from investors. This illustrates that securitization structures currently used in the industry already provide an appropriate alignment of interests between issuers and investors. As laid out in the Proposal, the Closing Date Projected Repayment Rate – Closing Date Projected Cash Flow Rate test could result in substantial overhaul in the way auto ABS deals are currently structured. We are supportive of the proposed solutions presented in the SFIG Comment Letter which provide for (a) projected fair value of retained risk to be at a minimum of 5% on each payment date (as projected on the closing date) (b) "hard" enhancement, such as overcollateralization or subordinate certificates/notes, based on the outstanding balance of ABS Interests are projected not to fall below 5% during the life of the transaction and (c) principal payments distributed to the EHRI will not exceed its pro-rata share of all payments to ABS Interests. We firmly believe that if the Proposal is not modified to accommodate existing prime Auto ABS structures, the resulting costs to modify the Auto ABS structures, including costs relating to the re-programming or overhaul of internal systems for purposes of complying with the Proposal, could be prohibitively high and would force issuers to reconsider its future use of Auto ABS.

5. REVOLVING MASTER TRUSTS

JPMorgan Chase appreciates the Agencies addressing many of the concerns raised by JPMorgan Chase and other industry groups on the Original Proposal in its efforts to re-propose risk retention rules "that better reflect the way revolving master trust securitizations operate in the current market." However, certain critical modifications still need to be made to the rules to make them workable and implementable for existing revolving master trust structures.

JPMorgan Chase has actively participated in and strongly supports the comments and recommendations submitted by SFIG and SIFMA relating to Revolving Master Trusts. But we would like to take this opportunity to highlight a few of the points that are essential to the continued viability of the credit card ABS market.

A. Definition of "Seller's Interest"

Section _.5(a) defines "Seller's Interest" as an ABS interest "…that is pari passu to each series of investors' ABS interests issued by the issuing entity with respect to the allocation of all distributions and losses with respect to the securitized assets prior to an early amortization event (as defined in the securitization transaction documents)." As discussed in our Original Comment Letter and as reiterated in the comment letters submitted by SFIG and SIFMA, this definition is inconsistent with virtually all of the existing credit card master trust structures. While the allocation of collections and losses is generally *pro rata* between the seller's interest and investor ABS interests during the revolving period, it is very common that the allocation of principal collections to the investor ABS interests is fixed during non-revolving periods, such as scheduled accumulation or amortization periods. As a result of such commonplace practice of fixing the allocation of principal collections, a portion of the principal collections that would have otherwise been allocated to the seller's interest effectively become subordinated to those allocated to the investor ABS interests during such non-revolving periods. Such allocation mechanisms are beneficial to and protective of the investors as they allow for orderly and timely repayment of principal of the investor ABS interests, without affecting the seller's interest's pro rata exposure to the credit risk of the receivables.

The definition of Seller's Interest as currently proposed will, probably unintentionally, preclude almost all existing credit card master trust structures, including JPMorgan Chase's, from using the Seller's Interest option to comply with the risk retention rule. Both SFIG and SIFMA have proposed revisions to this definition which would remedy the issue discussed above and are critical to any final rule. We agree with SIFMA's suggestions and strongly recommend that the Agencies, at a minimum, modify Clause (2) of the definition of Seller's Interest by replacing the phrase "prior to an early amortization event (as defined in the securitization transaction documents)" with the phrase "during the revolving period (as defined in the securitization documents)." We also support the changes recommended by SFIG – defining the Seller's Interest to be "pari passu with, or subordinated to" the investors' ABS interests in terms of the allocation of all collections and losses – which is intended to accommodate the different market practices among different asset classes that use the revolving master trust structure.

By making the modifications as suggested, the Agencies will create a Seller's Interest risk retention option that is consistent with current market practice and will allow sponsors of revolving credit card master trusts to comply with the rule through the most effective and efficient risk retention mechanism already in existence. We would like to reiterate that modifying the Seller's Interest definition is extremely critical to the continued participation and commitment to the market by credit card ABS sponsors and investors, including JPMorgan Chase. The Proposal as currently drafted would require amendments to existing master trust structures (e.g. eliminating the investor-friendly fixed allocation mechanism during non-revolving periods) that would have material adverse impact on ABS investors and would likely lead to ratings downgrades. In addition to being inconsistent with the Agencies' stated intention of proposing a risk retention option that better reflects current market practices, such adverse amendments will require investor consent and rating confirmations, both of which will be, for all practical purposes, impossible to obtain.

B. Measurement and Disclosure of Seller's Interest

JPMorgan Chase appreciates that the Agencies have accepted the recommendations presented in our Original Comment Letter as well as the American Securitization Forum's previous comment letter on the Original Proposal that the required seller's interest be measured at every measurement date specified under the securitization transaction documents, but no less than monthly, which is consistent with current market practice.

Section _.5(c) and Section _.5(g) also require, respectively, that the seller's interest be measured "at the closing of each issuance of ABS interests by the issuing entity" and that the sponsor shall provide to potential investors "a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction" the value of the seller's interest that will be retained at the closing of the securitization transaction. Given that seller's interest fluctuates on a daily basis based on fluctuations in receivables balance, in addition to issuance and maturities of securities, it is impossible for the sponsor to determine and disclose the value of the seller's interest as of a date prior to the closing date. JPMorgan Chase supports SFIG's and SIFMA's suggestion that the value of the seller's interest to be disclosed to investors be calculated as of the most recent measurement date as provided in the securitization transaction documents and be adjusted for, on a pro forma basis, any anticipated issuance of securities prior to or on the closing date, and any addition or removal of accounts that will take place prior to the closing date that will materially change the seller's interest amount.

C. “Specialized” Eligible Horizontal Residual Interest for revolving master trusts

JPMorgan Chase appreciates the Agencies’ acknowledgement of the unique characteristics of the revolving master trust structure and the incompatibility of the standard eligible horizontal residual interest option as proposed under Section _.4 with revolving master trusts. We applaud the Agencies’ efforts to respond to industry comments on the Original Proposal that revolving master trust structures should be given flexibility in the forms of risk retention by proposing a specialized EHRI option in Section _.5(f) that is intended to be used in combination with the Seller’s Interest option.

However, such specialized EHRI option, as currently proposed, fails to give credit to multiple existing features in many revolving credit card master trust transactions that effectively align the interests of the securitization sponsors and the investors, including, but not limited to, retained subordinated securities, and certain cash reserve and cash collateral accounts. Furthermore, while the specialized EHRI option, as proposed, may allow the securitization sponsor to reduce the required amount of seller’s interest by the fair value of the residual interest (i.e. the excess spread), the related fair value disclosure requirements will likely deter the securitization sponsor from using such option.

As stated in our Original Comment Letter, we believe that there are fundamental structural features, besides seller’s interest, inherent in existing revolving credit card master trust structures which effectively align the interests of the securitization sponsors with those of the investors, including retention of excess spread and subordinated securities issued by the master trust. We request that the rule allow securitization sponsors to receive credit for the amount of the risk that they retain in various common forms of risk retention, including retained subordinated securities. For example, in addition to maintaining more than 5% of credit risk exposure in each of its credit card master trusts in the form of seller’s interest, JPMorgan Chase, through its subsidiaries, also holds an interest in excess spread and retains a significant amount of the subordinated ABS issued out of its credit card master trusts. As of September 30, 2013, JPMorgan Chase, through one of its subsidiaries, retained $2.2 billion of Class B Notes and $2.3 billion of Class C Notes issued out of Chase Issuance Trust, representing approximately 75% and 80% of the outstanding principal amount of all Class B Notes and Class C Notes, respectively, issued by the trust. The Class B Notes and Class C Notes serve as credit enhancement to the more senior Class A Notes which are currently 100% held by third-party investors. Such retained subordinated securities are commonly considered by investors and issuers alike to be effective forms of risk retention, in addition to the seller’s interest. JPMorgan Chase supports SFIG’s recommended changes to Section _.5(f) which will provide sponsors of revolving master trust structures with the flexibility to satisfy risk retention requirement through a combination of various forms of horizontal interest, including, in particular, any retained subordinated securities. This is similar to the flexibility the Agencies provided for other asset classes that permit sponsors to hold any combination of eligible vertical and horizontal interests to meet the risk retention requirement.

JPMorgan Chase also supports SFIG's recommendations that such specialized EHRI for revolving master trust be measured on a face value basis (i.e. outstanding principal balance) as a percentage of aggregate outstanding investor ABS interest issued by the issuing entity (except for excess spread, which industry participants believes will be more appropriately measured on the basis of fair value). Fair value calculations are complex and, in most cases, inherently subjective, and they will be particularly burdensome for master trust structures, especially given the frequency of the measurements required (at least monthly) and the need to recalculate the fair value for all outstanding ABS interests on each closing date. The Agencies have proposed to allow sponsors of revolving master trusts to measure seller's interest requirement using principal balance due to the fact that "sponsors of revolving master trusts do not include senior interest-only bonds or premium bonds in their ABS structures." We believe that as long as a master trust does not issue interest-only or premium bonds, the same approach of allowing the use of principal balance can be applied to the measurement of other forms of risk retention, including a horizontal interest (other than residual interests in excess spread).

6. STUDENT LOAN ABS

JPMorgan Chase, through its various subsidiaries and lines of business, has participated and/or currently participates in the student loan industry as a lender to students, an issuer of asset-backed securities secured by student loans ("Student Loan ABS"), an adviser to clients in the student loan industry, a broker-dealer participating in the Student Loan ABS market and an investor in Student Loan ABS. JPMorgan Chase has been actively engaged in the comment letter process being organized by SFIG, as well as other trade and industry groups, and, in general, we support the positions and rationale contained within the SFIG comment letter with respect to the proposed risk retention rules and their application to Student Loan ABS secured by student loans that have been originated in accordance with the Federal Family Education Loan Program under Title IV of the Higher Education Act ("FFELP").

Notwithstanding that the Agencies have proposed reduced risk retention requirements for FFELP Student Loan ABS in the Proposal, we continue to believe that FFELP Student Loan ABS should be exempt from the credit risk retention requirements. While we commend the Agencies for considering an exemption from the risk retention requirements for FFELP Student Loan ABS, there are several factors that are worth reiterating, which, in our view, would provide the basis for a full and unqualified exemption of FFELP Student Loan ABS from the scope of risk retention.

One of the objectives behind the concept of risk retention was to encourage originators or sponsors to underwrite loans responsibly and own the credit risk underwritten by having "skin in the game." However, FFELP student loans effectively have no underwriting criteria. The primary purpose of the FFELP program was to allow students to finance their education with U.S. government guaranteed student loans, which had reasonably affordable interest rates and favorable loan terms. As a result, any student would qualify for a FFELP student loan (subject to certain loan limits) regardless of customary underwriting criteria that would be associated with other types of loans (including credit score and income). Income was solely a determinate in the type of product received (e.g. subsidized Stafford vs. unsubsidized Stafford). Instead of underwriting criteria, the Higher Education Act of 1965, as amended, and the interpretative *Common Manual: Unified Student Loan Policy* calls for a FFELP student loan to be made to any student that attends a Title IV school and requires that specific documentation be completed and obtained. Mindful that FFELP student loans were not subject generally to faulty underwriting practices contemplated by Dodd-Frank, we strongly believe that risk retention should not apply to FFELP student loans.

In other asset classes, underwriting is used to reduce overall risk associated with the assets. FFELP student loans are unique as they are primarily guaranteed by guarantee agencies (and ultimately backstopped by the U.S. government). The existence of the guarantee alone should exempt FFELP student loans from risk retention requirements; however, the mechanics of the guarantee will provide further support for this position. The calculation of the guarantee payment is calculated on a loan level basis. For example, if a loan is 97% guaranteed, then that 97% is calculated on principal balance and all accrued interest on the loan. Depending on the interest rate, the recovery on the asset could be above par of the principal balance. In a pool of assets, this guarantee will be paid as loans default. Interest on other assets will continue to be earned as those other assets are paying. In addition, the Proposal already contemplates exemptions for other federally insured or government guaranteed loans, and we are of the opinion that FFELP Student Loan ABS should equally be exempt from the risk retention requirement set forth in the Proposal.

We firmly believe that the absence of these critical modifications to the Proposal will have significant negative implications on the traditional FFELP student loan securitization market, which would ultimately result in constrained credit and increased economic cost to students, especially if the FFELP program is to be revived[3], and in the interim, would negatively impact investors who are still trying to restructure illiquid securities (e.g. auction rate securities).

[3] It is important to note that we there are FFELP loans still being generated through the rehabilitation process.

7. ABCP CONDUIT RISK RETENTION OPTION

JPMorgan Chase appreciates the Agencies' efforts to address the comments made by ABCP conduit sponsors, individually and through various industry groups, in connection with the Original Proposal. Although the revisions made to the Original Proposal address many of the concerns raised by the ABCP conduit industry, additional changes are needed in order for the ABCP conduit risk retention option (the "ABCP Conduit Option") to provide a feasible risk retention option for ABCP conduit sponsors. The ABCP conduit business continues to be an important source of financing for JPMorgan Chase customers; as of September 30, 2013, the JPMorgan Chase ABCP conduits had approximately $17.7 billion ABCP outstanding and approximately $28.8 billion in outstanding commitments to its customers. Additionally, the JPMorgan Chase ABCP conduits (like other similar multi-seller ABCP conduits with liquidity coverage sized to cover all outstanding ABCP) performed well during the financial crisis.

We note that we are actively working with SFIG to develop proposed changes to the ABCP Conduit Option to address the issues identified in this section of our letter.

A. Liquidity Facility Requirements

The Proposal's definition of eligible ABCP conduit not only requires that a regulated liquidity provider must provide a legally binding commitment to provide 100% liquidity coverage to the ABCP issued by the conduit, but also requires that the liquidity provider's obligation must not be subject to the credit performance of the conduit's assets. As a result, the Proposal would require all ABCP conduits to convert all of their liquidity facilities to unconditional (or "fully supported") liquidity facilities. Currently, JPMorgan Chase provides 100% liquidity coverage to its ABCP conduits, but the liquidity coverage in many cases takes the form of a partially supported liquidity facility, which bases the amount of liquidity coverage for a particular transaction on the amount of performing assets in such transaction. In the event that the amount that can be drawn under the liquidity facility is less than the amount needed to repay ABCP issued to finance the related assets, the conduit is required to draw on a letter of credit provided by JPMorgan Chase to provide program credit enhancement to the conduit. The conduit's program documents require the available amount of the letter of credit to be not less than 5% of the aggregate outstanding amount of the ABCP issued by the conduit, and the entire amount of the letter of credit may be drawn by the conduit to repay maturing ABCP issued in connection with any particular transaction or combination of transactions.

We believe that it is inconsistent for the Proposal -- which is designed to permit a conduit sponsor to rely on the risk retention of underlying sellers of assets to the conduit -- to also require the conduit sponsor to enter into commitments to provide 100% credit support to the conduit. We believe that a more consistent application of the Dodd-Frank requirement that a sponsor retain 5% of the risk of a transaction would be to require an eligible ABCP conduit to have 100% liquidity coverage for ABCP and at least 5% credit support, in the form of unconditional liquidity facilities or some other form of credit support, including a letter of credit.

In addition, we believe that the requirement that an ABCP conduit obtain liquidity from only one regulated liquidity provider is unduly restrictive and impairs the ability of financial institutions to syndicate liquidity facilities to other regulated financial institutions. Provided that the ABCP conduit sponsor retains at least 5% credit support (in the form of fully supported liquidity facilities or a letter of credit or similar credit support), we believe that the sponsor should be able to syndicate liquidity facilities to other regulated liquidity providers.

B. Eligible ABCP Conduit and Intermediate SPV Definitions

We appreciate the Agencies' efforts to address issues raised by the industry in connection with the Original Proposal, as the Proposal clearly alleviates some of the concerns highlighted in our Original Comment Letter and by various industry groups in 2011. However, the Proposal continues to include a number of conditions which would preclude ABCP conduit sponsors from using this risk retention option.

- The definition of intermediate SPV includes requirements that the SPV be a direct or indirect wholly owned affiliate of the originator/seller. However, in some cases (most notably in offshore conduit facilities) either the ABCP conduit sponsor or the originator/seller will set up an intermediate SPV that is an "orphan" SPV: it is owned by a corporate service provider or a charitable trust. The transactions in which these intermediate SPVs participate are no different from a conduit transaction in which the intermediate SPV is a wholly owned subsidiary of the originator/seller; rather, the corporate structure of such intermediate SPV is a merely a function of local laws and market practices.

- The Proposal provides that an eligible ABCP conduit must be collateralized solely by ABS and servicing assets. However, ABCP conduits have long provided financing to customers in the form of secured loans, which would not appear to satisfy the condition that the conduit be collateralized solely by ABS. In fact, most trade receivables conduit transactions are structured as secured loans to an SPV established by the originator/seller.

- The Proposal requires that the ABS acquired by the conduit are acquired in an initial issuance by an intermediate SPV; however, because ABCP conduit transactions are often structured in a manner similar to syndicated loan facilities, ABCP conduits may acquire ABS, or become a participant in a secured lending arrangement, through an assignment from another ABCP conduit. These acquisitions are not made to accumulate secondary market positions, but to facilitate the ABCP conduit's participation in a facility which it has underwritten in accordance with the same underwriting procedures used when the conduit purchases ABS directly from the intermediate SPV. Additionally, in these situations the ABCP conduit will typically become a direct party to the purchase agreements and similar documents that were executed at the time of initial issuance.

C. Acceptable Forms of Risk Retention for Originators/Sellers

The Proposal allows an ABCP conduit sponsor to satisfy the risk retention requirement if the originator/seller retains an economic interest in the credit risk of the underlying assets in the same form, amount and manner as would be required under Section ___.4 (horizontal and vertical slice options) or Section ___.5 (revolving master trust option) of the Proposal. Because ABCP conduits are designed to be flexible enough to provide financing to a wide variety of asset types, the Agencies should consider modifying the ABCP Conduit Option to provide that the originator/seller's satisfaction of the risk retention requirements, under any methodology or exemption, would satisfy the requirements under the ABCP Conduit Option.

For example, ABCP conduits may finance certain assets for which the originator/seller may be able to comply with the risk retention rules, but may not be required to comply with Section ___.4 or Section ___.5. For example, ABCP conduits finance auto loans and student loans, each of which may qualify for exemptions for qualifying assets. The ABCP conduit market would be at a great disadvantage to other financing alternatives if ABCP conduits are required to impose risk retention requirements on their customers that go beyond what would be required of the originator/seller if they issued ABS to non-ABCP conduit investors.

D. Disclosure Requirements

The Proposal includes requirements that ABCP conduits disclose to investors, and in some cases, regulators, extensive information about the risk retention employed by each of its customers. Although we believe that ABCP conduits will be able to provide some of this information to investors, there are a few disclosures which would preclude ABCP Conduit sponsors from using this risk retention method. First, while conduits should be able to disclose the form of risk retention for each deal, we do not believe that conduits will be able to provide fair value information. Many of the transactions funded by ABCP conduits are revolving transactions and therefore fair value may fluctuate frequently: conduit customers simply would not be able to provide the fair value calculations required by the Proposal.

The Proposal also requires that ABCP conduits disclose any breach by an originator/seller of its risk retention requirements, and such disclosure must identify the originator/seller by name. However, the Proposal also acknowledges that the ABCP conduit sponsor may take action to remedy such breach by, among other things, removing the asset from the conduit. In fact, this is precisely the remedy traditionally employed by ABCP conduits. Furthermore, if the asset is removed from the conduit and the amount funded under the liquidity facility (and, if necessary, the program credit support) is sufficient to pay all ABCP issued by the conduit to purchase and hold the asset, we do not believe that the disclosure to investors that an identified originator/seller has breached its risk retention requirement – particularly a disclosure that identifies such originator/seller – is necessary or desirable. We note that ABCP conduits already disclose to investors when liquidity is drawn on a transaction.

E. Restriction on Tenor of ABCP

The Proposal limits the use of the ABCP conduit risk retention option to ABCP conduits issuing ABCP with a tenor not exceeding 270 days. In the commentary accompanying the Proposal, the Agencies noted that currently the ABCP market is limited to 270 day paper. However, a number of potential regulatory changes (e.g. the liquidity coverage ratio and the net stable funding ratio) would create incentives for ABCP conduit sponsors to cause their ABCP conduits to issue ABCP with maturities in excess of 270 days. We note that ABCP conduit liquidity facilities are generally structured as at least 364 day commitments from the liquidity provider, and that the ABCP conduit's program documents require its administrative agent to draw on any liquidity facility in the event that the commitment expiry date of such facility will not be renewed. We believe that these features effectively protect investors even if ABCP has a maturity in excess of 270 days, and therefore we ask that either the tenor restriction be removed, or at a minimum, extended to 397 days.

F. Grandfathering of Existing Deals

ABCP conduit transactions are generally structured either as amortizing transactions, or as revolving transactions with a 1 or 2 year commitment provided by the ABCP conduit and/or related liquidity providers. As a result, an ABCP conduit does not have any contractual right to require an originator/seller to agree to amendments that would be needed to give effect to the new risk retention requirements until the commitment must be renewed. We therefore request that existing ABCP conduit transactions be grandfathered until such time as the transaction is renewed or would otherwise be amended.

8. COLLATERALIZED LOAN OBLIGATIONS

With respect to applying the risk retention rules of Section 941 as set forth in the Proposal to open market CLO's,[4] JPMorgan fully supports the letter of the LSTA (most particularly its recognition that the arranger risk retention option is not workable and its proposal for a broader and more practical definition of a "qualified commercial loan") and the letter of The Clearing House (including its comments that (i) the arranger risk retention option is not workable and will not benefit commercial borrowers and (ii) if CLO's are in fact subject to Section 941, the CLO manager is the decision maker whose interests are aligned with CLO investors and the Agencies should exercise their broad authority to treat the CLO manager's customary at-risk fees as acceptable risk retention under Section 941). We further support the letter of SFIG, regarding (i) the fact that the Proposal's revised definition of Fair Value, particularly the cash flow prohibitions, is not economically feasible when applied to CLO's, (ii) the proposed third-party retention holder option for CLOs and (iii) SFIG's assessment that 5% of the fair value of a CLO in the form of CLO equity substantially exceeds 5% of the credit risk.

While we appreciate the Agencies' recognition that the vast majority of CLO managers will not have the financial capacity to retain the required risk retention and that the loss of CLO origination will in turn have adverse economic repercussions, we were disappointed that the Agencies did not adopt or seek to find a solution based upon the proposal by the LSTA in its letter of April 1, 2013, by which the CLO manager could satisfy the risk retention requirement by holding, at least until the end of the CLO's reinvestment period, a combination of unfunded "vertical" and "incentive" notes issued by the CLO that are modeled to reflect the risks currently assumed by managers through the performance-based compensation structure that is now common in the industry and by purchasing equity securities issued by the CLO alongside other investors. We urge the Agencies to reconsider such an approach as set forth previously by the LSTA and the re-proposed fee-based risk retention proposal of The Clearing House as set forth in its letter. It is our view that a fee-based approach is in line with the legislative history of Section 941 and presents the most elegant and structurally sound manner in which Section 941 can be applied to CLO's in that it clearly comports with the mandate of Section 941 and does no harm to the U.S. economy.[5]

That said, we would like to take this opportunity in our own letter to stress the point made in both the LSTA and The Clearing House letters; **the Arranger Proposal, namely the Agencies' proposed alternative approach of having lead arrangers of syndicated credit facilities retain credit risk for the purpose of a CLO satisfying Section 941, is not a feasible alternative**. Indeed, we cannot envision a situation where bank regulatory costs and principles of prudent risk management would encourage JPMorgan, or any

[4] For these purposes, we are defining an open market CLO as a CLO of commercial loans originated and syndicated by third parties and selected for purchase on the open market by an asset manger unaffiliated with the originators of the loans. Open market CLO's will be referred to herein simply as CLO's.
[5] We believe that this approach also fulfills the Agencies' obligation to ensure that the benefits of their proposed approach exceed the costs the rules impose on loan recipients, lenders, syndicate participants, CLO managers, investors, and the public interest generally.

other bank which arranges the syndication of commercial loans, to establish a CLO eligible tranche (and thereby hold 5% of the term loan tranche most attractive to CLO's and other institutional lenders ("TL B") unhedged and non-transferable until maturity or a payment or bankruptcy default)[6]. Below are reasons why.

A. **The Hedging and Transfer Prohibitions of the Arranger Proposal Unduly Restrict a Bank's Tools for Sound Risk Management**.

Requiring a bank to hold any portion of the TL B tranche without the ability to transfer these assets or hedge against any credit risk eliminates valuable tools of sound risk management.[7] Banking supervisors would ordinarily encourage and often expect that loans maintained in our held to maturity portfolio will be effectively hedged and capable of being sold as JPMorgan's risk management deems prudent and as circumstances warrant. Yet the Arranger Proposal seeks to encourage exactly the opposite. Moreover, while the TL B tranche is structured and interest and fees determined in a manner attractive to institutional lenders, such as CLO's, such loans would be particularly unattractive to banks if such loans could not be hedged or transferred given regulatory capital, FDIC Large Bank Pricing and other regulatory deterrents to holding such loans.

B. **Representations and Covenants Required of a Lead Arranger Create Undue Potential Liability and Risk to Lead Arrangers.**

The Arranger Proposal also creates an additional level of potential liability and litigation risk for lead arrangers. The proposal defines a "lead arranger" in part as one who "represents … [in the credit agreement or other applicable agreements governing the CLO-eligible loan tranche] to the holders of the CLO-eligible loan tranche and to any holders of participating interests in such CLO-eligible tranche that such lead arranger and the CLO-eligible loan tranche satisfy the requirements of this section; and covenants therein to such holders that such lead arranger will fulfill the requirements of clause (i) of the definition of CLO-eligible loan tranche" (i.e., risk retention, including prohibition on hedging). By making this representation and agreeing to the foregoing covenant, a lead arranger opens itself up to potential liability, or, at the very least, litigation expense as the representation calls for subjective determinations as to the borrower's creditworthiness, the value of the collateral, the extent and sufficiency of the security interest in such collateral and compliance with the hedging, transfer and pledge prohibitions. This risk is magnified given that the hedging prohibition would run across all of JPMorgan's affiliates world-wide and is particularly problematic and exacerbated by the breadth and ambiguity of such prohibition. The prohibition in Section .12(b) (2) prohibits the lead arranger from entering into any agreement, derivative or other position or purchasing or

[6] The Arranger Proposal is therefore an ineffective option.

[7] Retention is required and the prohibition of hedging remains in effect until repayment, maturity, involuntary and unscheduled acceleration, payment default or bankruptcy default of the loan. The Sunset provisions do not mitigate this obligation with respect to the arranger of a loan since it is impossible to know when a loan will no longer find its way into a CLO given that a CLO buys and sells loans in the market during its reinvestment period. Thus, once a CLO eligible tranche is created, the arranger would have to keep the risk retention associated with that tranche until the loan matures.

selling any security or other financial instrument if such *"in any way"* [italics added] reduces or limits the financial exposure of the [lead arranger] to the credit risk of one or more" of the loans to be retained. The establishment of a CLO eligible tranche could conceivably bar all of JPMorgan businesses, globally, from buying or selling any manner of debt security or equity in, or entering into any derivative contract with respect to, a company that also happens to be a borrower with a CLO eligible tranche in which JPMorgan is the lead arranger. The opportunity to be second-guessed as to borrower creditworthiness and collateral quality and sufficiency or whether the world-wide activities of JPMorgan somehow, "in any way" reduce or limit the financial exposure" creates a risk of potential liability and litigation expense[8] far too great to warrant establishing a CLO eligible tranche.

C. **The Hedging Prohibition Impairs Liquidity for TL B Tranches.**

Liquidity is essential for any TL B tranche. Many institutional lenders require, and borrowers often demand, that the lead arranger/administrative agent provide such liquidity in the secondary loan market. This, in turn, creates more demand for these loans and results in more lenders willing to lend to the particular borrower, thereby potentially lowering the interest rate and fees to be paid by the borrower for the loan. However, if JPMorgan was to act as a lead arranger for a TL B with a CLO eligible tranche, the breadth and ambiguity of Sections .12(b) (1) and (2) could make it difficult to evidence that the trading activity or hedges with respect thereto on the secondary loan trading desk were not materially related to the CLO eligible loan tranche (since essentially the CLO eligible tranche is a sub-tranche of the TL B) and did not somehow reduce or limit our exposure in the CLO eligible loan tranche. Therefore, if JPMorgan was to act as a lead arranger for a TL B with a CLO eligible tranche, it would compound the risk to JPMorgan of providing liquidity to holders of the TL B through JPMorgan's secondary loan desk or could deter JPMorgan in doing so at all if the decision is made that our only safe alternative is to hold these loans unhedged. Without a party willing to provide this service, liquidity will be severely reduced for that term loan thereby making it less attractive to potential lenders, reducing the supply of willing lenders for such loans and consequently making the loan more expensive for the non-investment grade borrower.[9]

[8] In the event of an economically distressed borrower or a defaulted loan, a term loan lender might seek to claim a breach of this representation and covenant as leverage in an effort to recover losses. Arrangers are not fiduciaries and neither owes any duties nor makes any representations to potential lenders seeking to come into a credit facility. Each potential lender must independently evaluate the credit risk of the borrower and perform its own diligence. Moreover, the requirement that a CLO eligible tranche must have class voting with respect to material waivers and amendments in respect of the credit facility documents is not defensible. Borrowers and other lenders would essentially be giving veto rights to one class of institutional term loan lenders even though the rights to payment and collateral are *pari passu* with other tranches. This could deter other lenders from coming into the facility and create pressure on a non-investment grade borrower to increase the rate of interest and fees it is willing to pay for the facility in order to induce other lenders to take on this structurally subordinated risk.

[9] Other aspects of the Arranger Proposal are also unnecessary and/or impractical. The idea that a lead arranger should also be required to have an initial allocation of at least 20% of the face amount of the entire credit facility (all tranches) in order to "ensure that a lead arranger retaining risk had a meaningful level of influence on loan underwriting terms"(p. 148 of the Proposal) is completely unnecessary. It would be highly unusual that JPMorgan would syndicate a TL B tranche where JPMorgan is not also a lender in the revolver and/or TL A tranches (though we may manage the credit risk by hedging and we are free to assign or sell participations in the loans and commitments). Moreover, in the case where the lead arranger (or its bank affiliate) has fully committed, either alone or with other arrangers, to provide the term loan at closing, the interests of investors in the CLO and the lead arranger are already aligned since there is no

D. **The Arranger Proposal Would Further Decrease Liquidity to Non-Investment Grade Borrowers by Crowding-Out Other Credit.**

There is a finite amount of credit that any bank will extend to a borrower and its corporate family. Given the allocation of regulatory and economic capital and other regulatory costs associated with extending credit, by requiring a bank to hold 5% of any loan unhedged would ordinarily mean that the bank would have less capacity to provide other extensions of credit or products that result in credit exposure to that borrower and its corporate family. The Arranger Proposal presents exactly such a predicament. If a lead arranger opts to retain 5% of the TL B, it will have less capacity to provide cash management products, revolving credit facilities and other products such as foreign exchange and hedging transactions. Indeed, beyond this "crowding – out" effect, the Arranger Proposal creates a mismatch between the types of credit that banks are best suited to provide to its customers- and which a bank's customers desire that its bank provide because of credit worthiness and operational capabilities - and swaps those types of credit with TL B's, which are better suited for institutional lenders to provide.

E. **The CLO Risk Retention Rule With or Without the Arranger Proposal Will Significantly Impair Liquidity to Non-Investment Grade Borrowers and Harm the Economy.**

As the Agencies recognized in the Proposed Rule, if the 5% risk retention requirement is applied to CLO managers, then the result will most likley be fewer CLO originations and less competition in the CLO sector as many CLO managers will merge and smaller CLO managers will be acquired by larger managers with deeper balance sheets. Indeed the LSTA has reported in its letter dated July 29, 2013 to the Agencies regarding the risk retention rules, that according to a poll it took of CLO managers, 75% of CLO managers responding to the poll stated that they would be out of business as a result of the risk retention rule. Even if that number is discounted to 50%, the result is the same. If the risk retention rule is applied to CLO's, then it will significantly impair liquidity to non-investment grade borrowers which rely on institutional term loans for financing.

No one can dispute that CLO's are an important lender in today's economy. The estimated size of the U.S. institutional loan market is estimated at $685 billion, of which CLO's provide financing for 56% to 60% of that amount.[10] Further CLO's are the most stable source of funding in a TL B tranche, as CLO's are not materially mark-to-market sensitive. Given a CLO's insensitivity to the mark-to-market valuation of the loans it holds, it is not a forced seller of a loan due to a change in its price; as such in times of market stress and/or a deteriorating credit environment, CLO's are able to remain a

assurance that the loans can be syndicated. It is for this reason that there are often flex terms in commitment papers to enable the arrangers to attempt to modify the terms of the credit documents and increase interest rates and fees in order to facilitate the syndication of the credit facility by creating terms and pricing acceptable to potential lenders. For best efforts syndications, potential lenders in the TL B have the same capacity to comment on the terms of the credit documents and the fees and rates to be earned on the facility since, if the terms and pricing are not acceptable, such potential lenders will simply not sign up to become lenders. To state the obvious, no one is forced to become a lender.

[10] Standard & Poors/LCD; Markit Partners.

lender within the facility, managing their portfolio of loans based on default risk and likelihood of recoveries, and are more apt to be able to provide credit to borrowers during times of economic hardship. If a lender is mark-to-market sensitive, as other institutional lenders typically are[11], then they may be forced to sell in a market sell-off. Increased forced selling puts further downward pressure on the price of loans, and thus credit, thereby making it more expensive for a borrower to refinance, extend, or otherwise obtain financing.

Thus, future CLO origination is critical, especially given the anticipated number of CLO's that will exit their reinvestment period in the near future.[12] In this regard, it is estimated that $120 billion of term loans funded by CLO's will eventually need to be re-financed as a result by the end of 2014. Deterring the origination of replacement CLO's could very likely result in systemic risk since there is simply not enough capacity of alternative TL B lenders to absorb these exiting CLO's.[13] Moreover, in the case of a deteriorating economy and/or rising interest rate environment, we can anticipate that investors in other types of institutional lenders which permit the withdrawal of capital will be withdrawing funds out of such investment vehicles at this critical time. To add context, note that we estimate that approximately $125 billion has currently been invested in mutual funds[14] that acquire TL B loans for their portfolios and can foresee that if and when interest rates rise, approximately $50-60 billion of that invested cash could be withdrawn from these mutual funds into other higher yielding investments or equity. The combination of the withdrawal of investible cash from mutual funds together with the principal amount of term loans held by CLO's exiting their reinvestment periods will, in our view, create the potential for a significant liquidity crisis for U. S. companies that rely on TL B financing.

The decrease in the number of TL B lenders seeking to participate in such term loans will reduce the amount of credit that can be provided to borrowers and/or that borrowers will have to pay more for the funds provided, thereby putting additional pressure on these non-investment grade U.S. businesses. This "perfect storm", triggered in part by the CLO risk retention rules, will become absolutely critical when borrowers must re-finance their term loans. Nor can we depend on the high yield bond market which has constraints on capacity, is not large enough to absorb the expected loss of TL B liquidity and has, in fact, shut down and/or considerably slowed at various times in the past.

The victims of this storm are companies that are an integral part of the American economic fabric. A review of the TL B's arranged by JPMorgan over the last couple of years' shows that these borrowers include hospitals, health care providers, grocery stores, medical device manufacturers and food processors. They provide tens if not hundreds of

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[11] Mutual funds are mark-to-market sensitive and will often sell loans in their portfolio during economic deterioration of the borrower or the market. Hedge funds which incur leverage through total return swaps are also mark-to-market sensitive as they must sell loans because of margin calls.

[12] We anticipate that nearly all of the CLO's formed prior to 2007 will be exiting their reinvestment periods by the end of 2014.

[13] In today's institutional loan market, CLO's comprise 56%, hedge funds and mutual funds are 29% and the remaining 14% are banks, insurance companies and other financial institutions.

[14] Those registered under the Investment Company Act of 1940, as amended.

thousands of U.S. jobs. Therefore, we urge the Agencies to carefully consider our views above and those of the LSTA, The Clearing House and SFIG regarding the CLO risk retention rule.

We are pleased to have had this opportunity to provide the Agencies with our comments on the Proposal. If the Agencies have any questions concerning this comment letter, or would like to discuss further any of the matters that we have raised, please feel free to contact me or my colleague, Debbie Toennies, Managing Director, JP Morgan Chase & Co., 10 S. Dearborn, Mail Code IL1-0594, Chicago, IL 60670, 312 732-6383, debbie.a.toennies@jpmorgan.com.

Sincerely,

Bianca Russo

Bianca A. Russo
Managing Director and Associate General Counsel