FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990
Division of Risk Management Supervision

March 13, 2014

TO: Executive Secretary

FROM: Gene J. Pocase
Acting Senior Examination Specialist
Policy & Program Development Section

SUBJECT: Meeting with IPFS Corporation Representatives Related to Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Please include this memorandum in the public file on the Notice of Proposed Rulemaking relating to Credit Risk Retention (RIN 3064-AD74), 78 Fed. Reg. 57927 (the "NPR").

On March 5, 2014, FDIC staff (Rohit Dhruv, Gene Pocase, and Phil Sloan) participated telephonically in a meeting with representatives of IPFS Corporation ("IPFS"). Bryan Andres and Shawn Bradia participated on behalf of IPFS. Legal and other representatives consisted of the following: Mark Fallon of Americo Life; Carl Struby of Lathrop & Gage, LLP; and Douglas Rutherford of Rutherford & Bechtold, LLC. Also participating in the meeting were the following representatives of other agencies that approved the NPR: David Alexander, Sean Healey, and Brian Knestout of the Federal Reserve Board, as well as Adam Ashcraft and Steve Schoen of the New York Federal Reserve; and David Beaning, Lulu Cheng, Katherine Hsu, Arthur Sandel, and Sean Wilkoff of the Securities and Exchange Commission.

The discussion focused on IPFS's concerns relative to the credit risk retention proposal on insurance premium financing. A document provided by IPFS is attached.

Attachment

March 5, 2014

IPFS Meeting with Federal Reserve

Subject: Proposed Rules on Credit Risk Retention

Agenda:

I. Objective
II. IPFS Background
III. Significant issues with the September 2013 Re-Proposal
IV. Impact on IPFS if these issues are not addressed

I. Objective

As noted in our comment letter dated October 30, 2013, it is apparent from the Re-Proposal that the committee was responsive to our comments on the first proposal. We appreciate that our comments were given due consideration. Our objectives for this meeting are as follows:

A. Discuss a few key concerns we have with the language in the Re-Proposal that we believe will be most harmful to IPFS.

B. Provide specific suggestions to resolve these issues. We believe these solutions will address our concerns without inhibiting the achievement of your overall objectives.

C. Outline the significant damage that we believe IPFS and our customers will incur if these issues are not addressed in a meaningful manner.

II. IPFS Background

A. What we do.

IPFS Corporation and its three premium finance subsidiaries originate and service insurance premium finance loans collateralized by property and casualty insurance policies (not life insurance). We estimate that we have a 20% market share and are the only large premium finance company that is not bank owned. We believe we are the only premium finance company that uses the ABS markets for its primary financing.

We finance over $7.5 billion in premiums annually and provide loans to over 550,000 business and 25,000 individuals. As of October 31, 2013, IPFS's outstanding receivable totaled over $2.2 billion. The majority of our loans are to small businesses with limited access to other financing sources. Approximately 83% of our loans are for less than $5,000 and 90% are for less than $10,000. Because of the specialized nature of the market, most commercial banks choose not to make such premium finance loans.

The premium finance industry, including IPFS, fills a critical financing need for American businesses. The Federal Reserve Board recognized that critical role by including premium finance loans (along with a handful of other particularly safe and important asset classes) in its successful Term Asset Backed Securities Loan Facility ("TALF") program, noting that:

> More than 1.5 million insurance premium finance loans are extended to small businesses each year so they can obtain property and casualty insurance. The loans are often funded through the asset-backed securities (ABS) market and have become more expensive and more difficult to obtain since the shutdown of that market last fall. The inclusion of insurance premium ABS as TALF-eligible collateral will facilitate the flow of credit to small businesses.

Approximately 96% of our loans have a remaining life of 9 months or less at any time. Our payment rate is over 20% per month measured by receipts in a month divided by the beginning receivable. The average life of our loan portfolio is approximately 4 ½ months.

IPFS has grown over the years primarily by acquiring the assets and ongoing business operations of other premium finance companies. We have acquired 21 companies over the last 17 years, the last of which was AI Credit, a subsidiary of AIG, in February 2010.

B. How we finance our operations.

IPFS and our premium finance subsidiaries finance our operations by selling premium finance loans to a bankruptcy-remote entity, PFS Financing Corp. ("SPV"), which is a wholly-owned subsidiary of IPFS. The SPV raises funds to buy the loans by issuing term notes in the 144A market, variable funding notes (which operate like lines of credit) to bank-administered commercial paper conduits, and extendible term notes eligible under Exchange Act Rule 2a-7 for purchase by money market funds. Our SPV's variable funding notes account for approximately 27% of our capacity, its 2a-7 notes account for approximately 5% of its capacity and its term notes account for the balance. All of the SPV's notes are secured by the common pool of premium finance loans owned by the SPV and acquired from IPFS and its premium finance subsidiaries.

We have used the ABS market for 20 years. Our facility has grown from $100 million in 1994 to over $2.2 billion in capacity today. Our current facility has been in place since 2001. Our current facility has always had SPV-level risk retention in excess of 5%.

Our receivable pool balance is seasonal and will swing $350 million or more from the low tide to high tide during the year. The multi-faceted nature of our facility gives us the ability to address the seasonal needs of our customers, grow or shrink our business in an orderly way, and provide our lenders with a loan arrangement that meets their needs. Our 144A noteholders, for example, seek 2 or 3 year loans with bullet maturities. As another example, our variable funding facilities enabled us to originate a short term bridge loan that financed our acquisition of AI Credit's assets in 2010.

C. Role of Conduits in approving receivables.

Some portion of the SPV's pool has always been loans that IPFS acquired from a third party. During the normal course of business, IPFS acquires loans from other premium finance lenders who, due to their small volumes, do not have access to the ABS market. Presently, about 8.6% of the portfolio consists of such loans. These loans are underwritten by IPFS under the same underwriting guidelines as those loans that we enter into directly. These guidelines are provided to the funding agents for the participating ABCP conduits, and we can't amend the guidelines in any material respect without the funding agents' and the rating agencies' approval.

When IPFS acquired AI Credit's business in 2010, it financed the acquisition through the SPV, doubling the facility's size. In this and other similar acquisitions, IPFS must demonstrate to the funding agents of our ABCP conduits, and to the rating agencies, that the acquired assets will not have a material adverse effect on the overall performance of the portfolio. Block acquisitions that exceed 5% of the existing pool must be approved by holders of 2/3 of the maximum funded amount of our revolving notes, and must not trigger a rating agency downgrade of our rated notes.

III. Significant Issues with the September 2013 Re-Proposals

A. Eligible ABCP Conduit Proposal

1. We have always had more than 5% risk retention at the SPV level. Our SPV meets the definition of a majority-owned OS affiliate. As such, page 98 of the Re-Proposal Release says our SPV's risk retention would satisfy an eligible ABCP Conduit's risk retention requirement. Section 6(b)(1) of the rule appears inconsistent with this statement by only referring to retention of risk by the originator-seller. **Please state in the final rules that a majority-owned affiliate of an originator-seller can satisfy the risk retention requirement of an eligible ABCP Conduit. [See paragraph B.1 at page 9 of our October 30, 2013 letter.]**

2. We understand that the agencies are concerned that permitting third party-originated loans in conduits could interfere with the conduit liquidity provider's policies and practices for monitoring and managing risk. We believe that our facility gives liquidity providers adequate opportunity to monitor and manage their risk from loans that our SPV acquires. We understand and respect that by restricting eligible ABCP's Conduits' acquisitions

of ABS securities that are collateralized by assets not originated by the originator-seller, the agencies intend to eliminate the risk of aggregation of the type that created significant issues in the mortgage securitizations. However, the restrictions threaten our facility, will make financing more expensive to us and our customers, and will make acquisitions such as our purchase of AI Credit impossible. **[See paragraphs B.2 and B.3 at pages 10-13 of our October 30, 2013 letter.]** Please **consider the following alternatives:**

a. Limit this restriction to the asset types that created the angst to begin with, i.e., mortgages, or

b. Exempt master trust revolving transactions from this limitation. Structures such as ours are established to provide long term financing solutions for the originator-seller. The structures contain underwriting criteria that are approved by the rating agencies and by the ABCP conduits. Those criteria apply to all loans sold into the master trust regardless of the source of the loans. For the originator-seller to survive, it is also imperative that the trust's performance be consistent; there is only downside to us if originator-sellers put bad assets into the trust.

c. If you are unable to exempt master trusts from these rules, we ask that you modify the proposal (i) to permit a conduit to acquire assets collateralized by loans originated by a third party when originated in accordance with policies approved by the ABCP conduits or their funding agents and (ii) to permit block acquisitions that occur in connection with business acquisitions, whether by merger or asset purchase, when the ABCP conduit's liquidity providers have had an opportunity to review the performance of the assets being acquired and approve the transactions in accordance with the SPV's transaction documents.

d. If none of the foregoing modifications can be made, please cap the percentage of receivables held by the SPV that can be acquired from third parties at a specified percentage. We suggest 25%, which would permit us to operate substantially as at present.

B. Master Trusts

We proposed a number of desirable modifications to the Master Trust proposal in our October 30 letter. These are critical to our continued use of the ABS markets.

1. We ask that the agencies modify the definition of master trust so that it doesn't have to be a legal entity in the form of a statutory trust. Focus should be on what the issuing entity does or proposes to do, rather than its form. **We suggest modifying the term to mean "an entity that issues or proposes to issue multiple series, classes, subclasses, or tranches of asset backed securities all of which are collateralized by a common pool of**

securitized assets that will change in composition over time." [See paragraph C.1 at page 13 of our October 30, 2013 letter.]

2. The Re-Proposal states that a sponsor's wholly-owned affiliate may satisfy the sponsor's retained interest requirement**. Please confirm in the final rules that an SPV which is a wholly-owned subsidiary of a sponsor can satisfy the sponsor's master trust risk retention requirement. [See paragraph C.1 at page 13 of our October 30, 2013 letter.]**

3. In our experience, both the investors who buy our notes and the rating agencies who rate them desire credit enhancement that subordinates the seller's interest to the investor's interest. This is also consistent with the agencies' desire to create "skin in the game". We believe our current arrangement accomplishes this. The special horizontal interest described in Section __.5(f) of the proposal also accomplishes this and would be workable for us with a few modifications or clarifications.

a. During the revolving period of our SPV's notes, principal collections may be used to purchase new receivables. This is necessary to maintain an ongoing receivable base in a Master Trust such as ours. We understand that the Re-Proposal contemplates repurchases during the revolving period, but **please confirm in the final rules that the subordination provisions applicable to the special horizontal interest do not preclude such purchases. [See paragraph C.3.b. at page 17 of our October 30, 2013 letter.]**

b. In a facility such as ours which uses revolving funding notes, there will be peaks and valleys in the amount of outstanding ABS interests. When the facility is shrinking and the outstanding amount of revolving funding notes is reduced, there will be excess principal collections allocable to the residual interest that will not be required for risk retention or to purchase new receivables. There is no reason to trap these collections in the vehicle if the risk retention requirement is otherwise being met. **Please exclude the distribution of such principal collections from the subordination provisions applicable to special horizontal interests. [See paragraph C.3.b. at page 18 of our October 30, 2013 letter.]**

c. On a related point, the Re-Proposal states that issuers wishing to use the special horizontal interest must maintain the specified level of risk retention in every series. While not required to maintain a specified amount (as long as we have a positive balance), our SPV has what is called "available issuer interest", which consists of amounts in the collateral pool in excess of required retention. "Available issuer interest" includes funds held in our excess funding account pending use for repurchase or other permitted uses. This interest represents trust-wide retention that is allocable to each series based on a formula described in our October 30 letter. If we are not given credit for this trust-wide interest, collections allocable to this interest should be exempt from the subordination requirements. Similarly, to the extent that certain collections on receivables are not eligible to be counted for risk retention purposes (e.g., collections on ineligible receivables or over-concentration receivables), such collections should be exempt from the subordination requirements. **[See paragraph C.2 at page 15, paragraph C.3.a. at page 16 and paragraph C.3.c. at page 18 of our October 30, 2013 letter.]**

d. Please confirm in the final rules that the only rules on distributions applicable to the special horizontal interest are as set forth in Section __.5(f), and that the rules on distributions applicable to eligible horizontal interests do not apply.

e. Please do not restrict the early amortization provisions of Section __.5 (h) to master trusts with revolving assets, and modify the provision to permit additional issuances if the events resulting in early amortization have been cured. **[See paragraph C.2 at page 57 of our October 30, 2013 letter.]**

f. Requiring calculation of the special horizontal interest on the basis of fair value is impracticable and burdensome for short-term, high quality assets such as ours, particularly in the context of a revolving note. **Please adopt final rules that permit using face value of short term assets instead of fair value. If you require fair value measurements, when addressing revolving ABS interests please only require them at the date of the initial borrowing and thereafter no more often than annually. Further, if fair value determinations are required in connection with a closing, please permit a measurement date that falls before a series' closing date, as measurement on the closing date is not practicable. [See paragraph C.2 at page 14 and C.3.d. at page 18 of our October 30, 2013 letter.]**

C. Horizontal Interests.

1. We prefer that the agencies' treat our facility as a master trust, because that is how the market views it. However, if the agencies do not modify the Master Trust proposal in a way that permits our SPV to qualify as a master trust, we will have to use Horizontal Risk retention. In that regard, we ask that the agencies:

a. Modify the limitation on distributions to permit reinvestment of collections. **[See paragraph D.1 at page 19 of our October30, 2013 letter.]**

b. Adopt the alternative eligible horizontal residual interest proposal, but modify it by (i) distinguishing between payments from finance charge collections and principal collections and (ii) permitting greater than a proportionate share of finance charge collections to be distributed to the horizontal interest on a payment date if a sufficient amount is set aside to pay interest on the next payment date. Otherwise, excess cash flow not needed for risk retention would be trapped and would not be available to the sponsor to fund operations. Also, please treat increase or decrease dates of variable funding notes as a new issue date for purposes of determining a residual interest's proportionate share of principal and interest distributions. We have had some variable funding notes in place over 10 years, and requiring a determination of cumulative distributions from the original issue date would be burdensome and of no obvious benefit. **[See paragraph D.2 at page 19 of our October 30, 2013 letter.]**

IV. Impact on IPFS if these issues are not addressed

We ask that you respond affirmatively to our requests for modification of the Re-Proposals. Failure to do so will, at a minimum, increase our costs of doing business and our customers' borrowing costs and could impact our ability to maintain receivables at historic levels.

As we note above, variable funding notes held by funding agents of commercial paper conduits represent approximately 27% of our facility's capacity. If the proposal regarding ABCP conduits is not changed, it is likely that some or all of our ABCP conduits would exit our facility or at least pass the increased cost of complying with the risk retention requirements to IPFS. Either of these events may affect our ability to maintain the receivables in our facility at historic levels, which could result in a payout event and early amortization of our facility.

Failure to modify the master trust rules so that our existing facility qualifies could have a serious effect on our companies. We likely would need to create a new facility with a new issuing entity, which would take up to nine months or more to license in the various jurisdictions which require licensing. It seems particularly unfortunate to suffer such consequences in the context of a facility which has never come close to causing a loss to any noteholder.