STRUCTURED
FINANCE
ASSOCIATION

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

Re: Proposed Revision to Securitization Safe Harbor Rule

Dear Mr. Feldman:

The Structured Finance Association ("**SFA**") appreciates the opportunity to respond to the proposed revision (the "**Proposal**") to the Securitization Safe Harbor Rule (the "**Rule**") released by the Federal Deposit Insurance Corporation (the "**FDIC**") on August 22, 2019.

Background on the Structured Finance Association

SFA represents over 360 members from all sectors of the securitization market, and our core mission is to support a robust and liquid securitization market. SFA provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. In balancing the interests of our diverse membership, SFA values consistency and clarity across applicable regulations and welcomes the opportunity to provide feedback on the Proposal.

Summary of Current Rule and its Effect

The FDIC promulgated the Rule in 2010. The Rule provides that if the FDIC is appointed as a receiver or conservator for an insured depository institution (an "**IDI**") that has sponsored a securitization and satisfied the conditions of the Rule at issuance, either (i) if the assets are off of the IDI's balance sheet at the time of the sale of the securitized assets, in the exercise of its authority to repudiate or disclaim contracts, the FDIC will not seek to reclaim, recover or recharacterize as property of the IDI the financial assets transferred as part of the securitization transaction; or (ii) if the assets remain on the IDI's balance sheet at the time of sale and the FDIC repudiates the securitization agreement pursuant to which the financial assets were transferred and does not pay damages within the period specified in the Rule, or if the FDIC is in monetary default under a securitization for the period specified in the Rule due to its failure to pay or apply collections received by it under the securitization documents, remedies will be available to investors on an expedited basis.

One of the conditions of the Rule includes compliance with Regulation AB of the Securities and Exchange Commission (the "**SEC**"), 17 CFR 229.1100 et. seq. ("**Regulation AB**").

After the FDIC adopted the Rule, the SEC adopted amendments to Regulation AB, which went into effect in November 2016 ("**Regulation AB II**"). Regulation AB II does not apply to privately placed securitizations. The Rule requires IDIs that sponsor securitizations and seek to satisfy the conditions of the Rule to comply with Regulation AB, which according to the Rule would include Regulation AB II, regardless of whether the securitizations are publicly registered or privately placed.

The Proposal would amend the Rule so as to require compliance with Regulation AB and Regulation AB II disclosure requirements only in the case of a transaction that is otherwise required to comply with Regulation AB under the SEC's rules, i.e., publicly-registered transactions. To that end, the Proposal would create consistency in the application of the disclosure requirements under Regulation AB.

Concerns with the Current Rule

As a result of the current requirements of the SEC, the Rule creates a mismatch between the regulations that are applicable to an IDI and an institution that is not an IDI (a "**Non-IDI**") seeking to enter into a similar transaction. With respect to a privately placed securitization sponsored by an IDI that seeks to satisfy the conditions of the existing Rule, such IDI is required to comply with the rules applicable to a publicly registered securitization in Regulation AB, even though under the SEC's rules, those rules would not otherwise apply to privately placed securitizations. In contrast, in a similar privately placed securitization sponsored by a Non-IDI, Regulation AB does not require such Non-IDI to comply with Regulation AB.

Perspectives on the Proposal

SFA and its members agree with the changes described in the Proposal based on the principle that the regulations applicable to industry participants should be consistent. In that regard, SFA supports the view that institution-type should not affect the disclosure rules that are applicable to an IDI and a non-IDI entering into a similar transaction.

Although SFA members generally agree that the regulations should be consistent, they continue to hold differing views with respect to whether the disclosure requirements of Regulation AB should also apply to privately offered structured finance products eligible for resale under Rule 144A of the Securities Act of 1933, as amended ("**144A Issuances**"), in the same manner as they currently apply to publicly registered transactions. SFA's investor members generally support the extension of the existing disclosure requirements by the SEC under Regulation AB to 144A Issuances. In contrast, SFA's issuer members generally do not support the extension of existing disclosure requirements by the SEC to 144A Issuances. Notwithstanding the above, SFA believes that proposals to address any changes to the disclosure requirements under Regulation AB are more appropriately addressed by the SEC instead of the FDIC. Furthermore, to the extent the Rule incorporates Regulation AB by reference, SFA is supportive of the FDIC's proposed provision that amendments to Regulation AB are automatically incorporated into the Rule.

SFA acknowledges that one of the Proposal's policy objectives is to remove unnecessary barriers to securitization transactions undertaken by IDIs, thereby increasing, in a responsible

manner, the supply of available credit. SFA is very supportive of that objective, and would like to draw the FDIC's attention to other regulatory barriers, including the linkage between regulatory risk-based capital treatment and accounting-based consolidation decisions. In deciding to link regulatory capital treatment to an accounting-based consolidation framework, no capital relief is afforded to any bank issuer that maintains a certain level of control over the assets underlying a securitization transaction even if there has been a definitive transfer of significant risk to third party investors. Where these investors are also banks, this could result in redundant capital requirements that are not reflective of risk retained by the bank and, therefore, a reduction in the amount of available credit.

In its 2017 *Capital Markets Report*, the U.S. Department of the Treasury recommended that banking regulators "rationalize the capital required for securitized products with the capital required to hold the same disaggregated underlying assets. Capital requirements should be set such that they neither encourage nor discourage funding through securitization, thereby allowing the economics of securitization relative to other funding sources to drive decision making." [1]

Although outside the scope of the Proposal, SFA would welcome engaging in a dialogue with the FDIC and other banking agencies regarding the way in which regulatory capital is calculated. We would welcome the opportunity to discuss this issue with the FDIC staff at their convenience.

Conclusion

SFA welcomes the FDIC's Proposal and our membership is eager to see consistency between the FDIC's and SEC's regulations as applied to market participants.

SFA appreciates your consideration of these comments and welcomes the opportunity to discuss further. If you have any questions about this matter, please contact Sairah Burki, Head of Policy, at (202) 524-6302 or sairah.burki@structuredfinance.org.

Very truly yours,
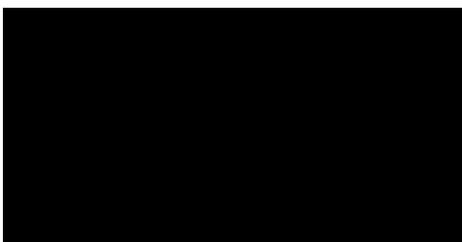
Sairah Burki
Head of Policy
Structured Finance Association

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[1] U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities, Capital Markets,* October 2017.