CRE Finance Council

September 13, 2011

**VIA ELECTRONIC FILING –** rule-comments@sec.gov
Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

**Re:** Solicitation of Comment to Assist in Study on Assigned Credit Ratings, Release Number 34-64456; File Number 4-629

Dear Ms. Murphy:

The Commercial Real Estate ("CRE") Finance Council® appreciates the opportunity to comment regarding the Commission's study on assigned credit ratings for structured finance products, undertaken pursuant to Section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[1]

We urge the Commission to thoroughly consider the perils of adopting a one-size-fits-all approach to addressing concerns about the alignment of interests in the credit rating process, and to recognize the uniquely complex requirements that the credit rating process entails for certain structured finance products, particularly commercial mortgage-backed securities ("CMBS"), which are composed of pools of heterogeneous assets. The degree of specialized expertise and effort that is required to rate such products makes it likely that a system of assigned credit ratings, such as that being studied by the Commission in this proceeding, would actually lead to lower quality ratings, and less competition and innovation in the credit rating industry.

We also commend the Commission for seeking the public's input on a variety of alternatives to the "issuer-pays" model of compensating credit rating agencies. We believe that a careful examination of these alternatives reveals that the issuer-pays model could be modified to arrive at the most beneficial balance of advantages and disadvantages, and would best serve the interests of investors and the public.

[1] Solicitation of Comment to Assist in Study on Assigned Credit Ratings, Release No. 34-64456; File No. 4-629, 76 Fed. Reg. 28265 (May 16, 2011) (hereafter, "Request for Comment").

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The CRE Finance Council is the collective voice of the entire $3.5 trillion commercial real estate finance market, including portfolio, multifamily, and CMBS lenders; issuers of CMBS; loan and bond investors such as insurance companies, pension funds and money managers; servicers; rating agencies; accounting firms; law firms; and other service providers.

Our principal functions include setting market standards, facilitating the free and open flow of market information, and education at all levels, particularly related to securitization. Securitization is one of the essential processes for the delivery of capital necessary for the growth and success of commercial real estate markets. One of our core missions is to foster the efficient and sustainable operation of CMBS. To this end, we have worked closely with policymakers to educate and inform legislative and regulatory actions to produce efficient and practical regulatory structures. We look forward to continuing to work with policymakers on this effort. We also continue our ongoing work with all market constituencies to develop industry standards which provide marked improvements in the CRE finance arena. Prime examples of our work include enhancements of both the CRE Finance Council's "Annex A" initial *loan-level disclosure package* and the Investor Reporting Package ("IRP")™ for ongoing disclosures and surveillance by investors. This granularity and voluntary disclosure of loan-level information is a key differentiator between CMBS and other classes of rated securities.

## I. OVERVIEW

The CRE Finance Council's members agree that an appropriate alignment of interests is necessary to ensure that credit ratings are sound and to promote investors' and the public's confidence in those ratings. Like several other initiatives that are being considered pursuant to Dodd-Frank, the assigned credit rating system that the Commission must examine under Section 939F appears to be contemplated with residential mortgage-backed securities ("RMBS") in mind, which played a pivotal role in triggering the nation's recent financial crisis. The Commission should not examine alternative credit rating frameworks solely through the prism of rating RMBS, however.

**An Assigned Credit Rating System Could Lead to Lower Quality Ratings, Less Competition, and Less Innovation in CMBS Ratings**: Serious drawbacks would flow from imposing an assigned credit rating system upon all asset classes without accounting for how such a system would affect particular classes, such as CMBS, which have unique requirements in the credit rating process. More specifically, because CMBS are backed by pools of heterogeneous assets, the credit rating process for CMBS requires a high degree of specialization, expertise and labor intensity. As such, an assigned credit rating system such as that contemplated under System 15E(w) could actually lead to lower quality ratings, and less competition and innovation in the credit rating industry. [For this reason, the CMBS industry would oppose the adoption of an assigned credit rating system for CMBS as would have been added by Section 939D of H.R. 4173 (111th Congress) as passed by the U.S. Senate on May 20, 2010 (referred to by the Commission as the "Section 15E(w) System").[2]]

[2] *See* Request for Comment, 76 Fed. Reg. at 28266.

**<u>The Commission Should Examine Ways to Modify the Issuer-Pays Model to Arrive at the Most Beneficial Balance of Advantages and Disadvantages</u>**: We commend the Commission, in any event, for seeking the public's input on a variety of alternatives to the "issuer-pays" model of compensating nationally recognized statistical rating organizations ("NRSROs"). We believe that a careful examination of these alternatives using the framework developed by the Government Accountability Office ("GAO") reveals that most of the alternatives have inherent conflicts and sufficient disadvantages of their own to temper the advantages they may offer compared to the issuer-pays model. This is especially the case when it comes to addressing the alignment of interests, and questions of feasibility and market acceptance. The subscriber-pays model, for example, creates its own set of conflict-of-interest concerns, as subscribers who hold the assets will have their interests materially affected by any rating changes. Accordingly, the Commission should examine ways in which the issuer-pays model could be modified to arrive at the most beneficial balance of advantages and disadvantages, and best serve the interests of investors and the public.

Our specific responses to the Request for Comment are below, and we include a brief background discussion on the current state of the CRE market in Appendix A.

## II. The Commission's Study Should Consider Important Differences in the Credit Rating Process for CMBS

The Request for Comment asks for a description of the processes by which structured finance products are initially rated, and whether these processes differ based on the type of product involved, including CMBS.[3] We do believe it is important for the Commission to be aware of the different characteristics of the rating processes for classes of ABS that depend on the nature of the underlying assets, and how these distinctions would affect the use of an assigned rating model.

Unlike many other classes of ABS, CMBS are comprised of pools of heterogeneous assets. Loans in the pool may be secured by different types of properties: office buildings, shopping malls, hotels, multifamily housing, manufacturing facilities, or any number of other types of commercial property. Further, these properties may be categorized in different classes depending on whether they are considered the highest quality in their market ("Class A" properties, which are typically the newer or more prestigious buildings in the best locations, and attract the highest quality tenants and command the highest rents); are of lesser quality than Class A (known as "Class B"); or are the lowest classification ("Class C," typically older buildings in less desirable locations, that attract the lowest rents but may take longer to attract tenants). And the assets may be in different geographic locations, which has a bearing in their classification (an office building in a large east coast central business district is more likely to be a Class A property than a shopping mall in a very small Midwestern town). These geographic distinctions are manifest in the ratings process when taking into account factors such as local cost structures and geographic economic cycles.

[3] *Id*. at 28268.

Given the relatively small number of loans in a CMBS pool (300-400, in contrast with RBMS, where the pools may have 1,000-4,000 loans), both raters and investors may evaluate assets in the collateral pool on an individual basis, and this is what many CMBS credit evaluations entail. (There are individual site visits and analysis of cash flows and valuations at the asset level.) The rating process for CMBS is, therefore, highly labor-intensive and demands a certain level of expertise to properly evaluate commercial properties. This has led to a relatively high degree of innovation in the market for rating CMBS and to specialization by firms that market constituents have come to rely on as having the necessary expertise and knowledge to reliably rate CMBS. Not all firms have the expertise to rate all the various deal types; many complex instruments require a high degree of competency and experience, such as liquidating trusts, collateralized debt obligations and revolving pools.

Additional items evaluated in the CMBS ratings process, but not for other ABS include: actual revenues versus gross potential revenues; occupancy/vacancy/credit loss rates; concessions/allowances; operating expenses and adjustments; sufficiency of replacement, tenant improvement/leasing commission reserves; capitalization rates; building structure and design and floorplans; quality of amenities; zoning issues such as availability of parking; quality/experience of property management team or franchise management teams; analysis of market competition; structure of commercial leases (abatements, termination options, offsets, etc.); analysis of bankruptcy-remoteness and structure of special purpose entity borrowers; market supply and demand dynamics; demand generators and market segmentation; seasonality concerns; visibility and curb appeal; payor mix (public vs. private) for healthcare facilities; and legal/regulatory climate for viability of business at the property.

Contrast the CMBS ratings process based on decades of historical performance data with that for other asset classes that involve far more homogenous assets such as RMBS, auto loans, or credit card receivables. In the case of RMBS, there is very little variation in the property involved – it will be a home secured by a mortgage that must be evaluated based on the borrower's income and credit score, rather than by cash flows generated by the property itself as is the case for commercial property. Auto loans and credit card receivables are even more homogeneous than RMBS. Moreover, since RMBS, auto loan and credit card receivable pools are comprised of thousands of loans, it is not practical for each individual asset to be evaluated as part of the credit rating process. Instead, the process entails statistical modeling and actuarial analysis, activities that are far less labor-intensive than those involved in rating CMBS where essentially no two assets are the same.

As a consequence of the complexity of the CMBS rating process, it would not lend itself to the type of assigned ratings model the Commission is evaluating. The amount of resources and expertise necessary to conduct, let alone become proficient, in conducting the intensive, specialized review necessary for commercial real estate assets requires a significant investment. Firms that do not already have this capacity will be very reluctant to make such an investment without more concrete prospects for a return than a random assigned ratings model could promise – especially in a price-regulated environment. This means that firms without sufficient expertise will be placed in the position of rating CMBS deals, leading to a decline in the quality, comparability and consistency of ratings – the opposite of the purpose for adopting an assigned ratings system. Alternatively, if the group of firms eligible to be randomly selected to perform CMBS ratings is limited to those that presently have the capability, competition and innovation will be stifled. And not having to compete among issuers would lessen the probability for new entrants into the space, and degrade new investments and innovation in the security analysis, leading to a commoditization (lowest-cost model) of ratings and a decline in quality. (See above for a list of rating considerations unique to the CBMS asset class.)

**Recommendation**: The Commission should consider particular consequences that flow from distinctions in ratings processes, and should avoid examining alternative credit rating frameworks solely through the prism of rating RMBS or other homogeneous pools of assets.

## III. Several Disadvantages Would Flow From an Assigned Credit Rating System and Such A Model Should Not Be Adopted

The Commission seeks comment on the Section 15E(w) System as evaluated under key factors identified by GAO: independence, accountability, competition and ratings quality, transparency, feasibility, market acceptance, and oversight.[4] While the CRE Finance Council agrees that appropriate alignment of interests is necessary to promote the accuracy of ratings and investor confidence, we believe that concerns in the areas of competition and ratings quality, feasibility, and market acceptance are sufficiently grave to warrant a recommendation that the Section 15E(w) System not be adopted in favor of modifications to the existing system.

As mentioned, the CRE Finance Council believes that an assigned credit rating model such as the Section 15E(w) System would have detrimental effects on competition and ratings quality in the credit ratings industry for CMBS, due to the complex and labor intensive nature of the CMBS rating process. Indeed, if firms are assured of the opportunity to rate CMBS through a random selection process, they will have far fewer incentives to invest in specialized knowledge or resources concerning CMBS, and less motivation to innovate, to the detriment of all market constituencies. More broadly, we believe that more healthy competition in the credit rating industry would be promoted by having market-based solutions instead of having the government choose winners and losers.

As for feasibility, the Section 15E(w) System would necessitate creation of a new regulatory structure of untold complexity, leading federal regulation into areas it wisely tends to avoid, such as price controls. What happens, for example, if an issuer and credit rating agency cannot agree on the fee for performing a rating? The Request for Comment

[4] *Id*. at 28270-72.

presciently asks whether fees would need to be set by rule.[5] The same question should be asked regarding other contract terms. It would be undesirable, from the market's perspective, to have regulations dictate all the terms of contracts between issuers and credit rating agencies, and a standardized template of terms and conditions would not allow for unique and heterogeneous collateral pools and innovative asset classes within the broader CMBS category. Lastly, what incentive would a rater have to ensure high-quality customer service?

We believe that market acceptance of the Section 15E(w) System would also be hampered by concerns about the quality of ratings under such a system. The prospect of having ill-equipped firms rating CMBS increases uncertainty for issuers, as they will be left to speculate on whether their issuances will be accurately and fairly rated, which in turn, may affect issuers' appetite for securitizing commercial mortgages and expose investors to undue risk.

**Recommendation**: Any enhancement of independence, accountability and government oversight of the credit rating process would be outweighed by the adverse effects that the Section 15E(w) System would have on competition, ratings quality, innovation, and the anticipated difficulties with feasibility and market acceptance. A more balanced approach would be to work within the present ratings framework to make modifications that would help address conflict of interest and oversight concerns while preserving the aspects of the present system that work best: its market-driven ability to foster competition, innovation, and specialization where necessary. This approach also would be efficient, leveraging the fact that this system has already proven feasible from a practical perspective, and enjoys market acceptance.

- Additional concerns that would arise from adoption of an assigned ratings system include:

    - Potential that investors may interpret government regulation of the rating agency selection process as an implicit guarantee of the ratings by the U.S. government, which would be inconsistent with policymakers' efforts to eliminate perceptions that credit ratings have any government imprimatur;
    - Questions about redress; if issuer seeks to appeal the selection of the NRSRO or the ratings assigned by that NRSRO, what recourse would issuer have, and would the appeal process ensure timely redress without implicating the issuer's capital requirements?
    - In a scheme that requires rating by a government-assigned NRSRO in addition to an issuer-selected one, there may be insufficient transparency regarding who truly pays the cost of the additional rating (*e.g.* investors or issuers?). We recommend that the Commission study this issue;
    - The Section 15E(w) System does not account for the importance of specialization to investors. Investors do not accept ratings in every

[5] *Id.* at 28272.

asset class from every rating agency -- some investors require a rating from one or more of the NRSROs with specialized expertise in rating a particular type of instrument;

- Credibility concerns with respect to the governing body of the entity that would assign credit ratings, for example, what qualifications should be in place an individual to serve on the board of the entity, and would these qualifications inspire the market's confidence?

Finally, the Commission should remain mindful that a host of oversight provisions were adopted in Dodd-Frank, which the Commission is still in the process of implementing.[6] These oversight enhancements include stricter internal and external oversight of conflicts-of-interest under the current system. The Commission should take the time to assess the efficacy of the new oversight measures after they have been effective for a reasonable period, and include this assessment in its evaluation of the current system.

## IV. Observations Regarding the "Issuer-Pay" and "Subscriber-Pay" Models

The Commission seeks comment concerning the conflicts-of-interest that may arise in the "issuer-pay" and the "subscriber-pay" compensation models for credit ratings.[7] The CRE Finance Council's members believe this area is a critical one to examine, because it is important to realize that while certain conflicts-of-interest are possible in the issuer-pay model, conflicts-of-interest also exist in the subscriber-pay framework, such that conflicts will not be alleviated simply by adopting some model other than issuer-pay.

This is the case because a subscriber can have a vested interest in a rating, just as an issuer may. For example, an investor holding an investment with a particular rating would see its interests affected if that investment's rating was downgraded; an investor whose investment guidelines limit it to purchasing investment-grade securities would have an interest in seeing a particular security's rating upgraded because the upgrade would allow the investor to purchase the security. It is also worth questioning whether, under the subscriber-pay model, large institutional subscribers, by virtue of being the "customer" in this case, would have undue influence to affect an initial rating of a security? This would seem to mirror the type of activity the Section 15E(w) System seeks to prevent.

In its September 2010 study of various compensation models, the GAO recognized the potential for such conflicts in the subscriber-pays model.[8] As a consequence, it is clear that a subscriber-pay model will not be a panacea.

**Recommendation**: The Commission's study should acknowledge that concerns regarding conflicts-of-interest will not be alleviated by simply adopting a different

[6] Many of these provisions are summarized in the Request for Comment, *see id*. at 28276.

[7] *Id*. at 26268-69.

[8] GAO Study at 80, n.107.

compensation model for credit ratings from the issuer-pay framework. We also urge the Commission in its study to measure the cumulative effects of the Dodd-Frank Act on NRSROs and the broader rating community – including those provisions outside of the Section 15E(w) System. Effective conflicts assessment and management should be a part of any framework that exists for credit ratings compensation.

## V. Observations Regarding Alternative Compensation Models

The Commission seeks comment on five alternative compensation models that were described by the GAO in its September 2010 report. The models were identified as the Random Selection Model, an Investor-Owned Credit Rating Agency Model, a Stand-Alone Model, a Designation Model, and a User-Pay Model. Following are our observations concerning these models using the evaluation criteria suggested by the GAO.

**Recommendation**: Of the various proposed models, an initiative of enhanced transparency under the Rule 17g-5 Program holds the most promise for serving as a complement to the current issuer-pay system to create incentives for accurate ratings.

### A. Random Selection Model

The Random Selection model would involve the assignment of a randomly selected credit rating agency to perform a rating; as such, it appears to be substantially similar to the Section 15E(w) System, and would be subject to the infirmities of that system discussed above. We will not repeat the entirety of the discussion, but emphasize that while a random selection model may ameliorate concerns about credit rating agencies' independence from the influence of issuers, this advantage would be outweighed by the adverse effects that random selection would have on competition, ratings quality, innovation, and the likely difficulties with feasibility and market acceptance.

### B. Stand-Alone Model

The stand-alone model is described as one that would compensate credit rating agencies through transaction fees imposed on original issuance and on secondary market transactions, and the credit rating agency would be compensated over the life of the security based on transaction fees.[9] The model presents a number of feasibility challenges, as it would require some entity to administer, monitor, and audit the payment system and it is unclear what entity would be in a position to handle such tasks, particularly for secondary market transactions. The model also creates the concern that it advantages issuances with more secondary market activity over those with less; this could incentivize more ratings actions to create more activity in the secondary market. Generally, any model that creates such incentives would be undesirable, and tying fees to secondary market activity is inadvisable. And finally, this model does not address

[9] *See* Request for Comment, 76 Fed. Reg. at 28277.

concerns that flow from having an entity with an interest in the rating, such as an issuer or subscriber, to select the credit rating agency.

### C. Designation Model

The Designation Model is described as giving all NRSROs the option of rating an issuance and having security holders designate fees to NRSROs based on the proportion of securities they owned and their perception of the quality of the underlying research.[10] Issuers would be expected to pay maintenance fees after the initial credit rating. The fees would be paid to a third party administrator that would be responsible for distributing them to NRSROs, and ratings would be free to the public.

This model raises many concerns, not the least of which is the complexity of attempting to administer such a system. Is it unclear how security holders would know who to designate for payment, since they would not buy a security until it is rated. Issuers would also be unable to make prudent and appropriate financial planning decisions for a deal if they cannot predict ahead of time how much the maintenance fees would be. And, as is the case for the stand-alone model, a framework that involves compensation to NRSROs through secondary market activity creates an entirely new set of conflict concerns.

For the vast majority of investors, this model is unworkable as a practical matter for securities like CMBS that involve a labor-intensive rating process. NRSROs cannot be expected to invest the resources that would be necessary to perform labor-intensive ratings and develop specialized expertise in exchange for a mere hope that they will be compensated for their efforts. The economically rational path will be toward performing the least labor-intensive ratings, and ratings quality, competition, and innovation would all suffer as a result, or worse: some assets may no longer be rated by NRSROs.

Perhaps most importantly, while this model may attempt to address the free rider problem that arises from making ratings free to the public, it may go too far in that direction because it does not account for the fact that a number of firms acting as institutional portfolio managers with large holdings on behalf of clients do not rely on the rating agencies for their investment selection decisions, but rather, rely upon their internal analyses. We would ask that the study consider the perceived or realized value to investors across the entire investor spectrum, not just individual or retail investors.

### D. User-Pay Model

Under the User-Pay Model, all "users" of a rating, described as those who have structured finance products on their balance sheets, holders of long or short positions in fixed-income instruments, parties that refer to credit ratings in contractual commitments, and those party to derivatives that rely on rated securities or entities, would be required to contract with NRSROs and pay for ratings.[11] This model presents perhaps the most

[10] *See id.*
[11] *See id*. at 28277-78.

insurmountable operational challenge of any of the alternatives because it will be difficult, if not impossible, to figure out who the "user" is in every case. A common example of this problem is presented by investors whose securities are held under the name of their broker-dealer. And like the Designation Model discussed above, it may sweep too broadly to address free rider concerns by assessing entities that actually do not rely on credit ratings to make their investment decisions.

### E. The Rule 17g-5 Program

The Commission seeks input on its present Rule 17g-5 Program for encouraging non-hired NRSROs to perform unsolicited ratings and whether this model could be modified to work as a more effective alternative or complement to the current issuer-pay system to create incentives for accurate ratings.[12] The CRE Finance Council believes an enhanced Rule 17g-5 Program holds the most promise of acceptance of all the suggested alternatives for promoting incentives for accurate ratings in a practical and timely manner.

Although the 17g-5 Program has been in place for more than one year, the CRE Finance Council's members report that the program has yet to be utilized to produce an unsolicited rating. For CMBS at least, we believe the program has not been utilized because of the costly, labor-intensive nature of the ratings process and the fact that none but the largest NRSROs could afford to perform an unsolicited rating without some assurance of being compensated. Essentially, an NRSRO is unlikely to be in a position of being able to rate a security or simply give away CMBS ratings for free.

But while we applaud the increased transparency and the direct access to loan-level information that are important characteristics of the 17g-5 Program, we accordingly believe that enhancements to the 17g-5 Program must be undertaken with a high degree of thought toward the operational side of the assets and the day-to-day transactions that could be impacted by release of sensitive tenant and management data. Carefully crafted enhancements to Rule 17g-5 have the potential to create more incentives to do unsolicited ratings, as well as provide investors with more information they might use to make informed evaluations of securities for themselves, through increased transparency. For example, we suggest that data that is made available by the arranger on the password-protected Internet site, as required by Rule 17g-5 the program, be transparent and open to all investors, credit rating agencies, and issuers. And for surveillance purposes, the data should be posted on the trustee's website as well.

One cautionary note on the full and open disclosure scheme under the 17g-5 Program concerns the treatment of rent information for commercial properties. Many commercial landlords consider tenant-negotiated rents to be proprietary and confidential. Opening up these records for access by third parties seeking leverage in lease negotiations could ultimately erode the pricing power of landlords to recover their operating and debt service costs. We recommend the study determine what level of

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[12] *Id*. at 28275-76.

tenant-level data, if any, is advisable for disclosure as part of an enhanced 17g-5 Program.

## VI. CONCLUSION

The CRE Finance Council appreciates the Commission's consideration of our comments to inform the study of assigning credit rating agencies for initial ratings of structured finance products. We stand ready to provide any additional assistance that may be helpful.

Respectfully submitted,

Stephen M. Renna
Chief Executive Officer
CRE Finance Council

# APPENDIX A

## Background: Current State of CRE Market

Given the important role that commercial real estate plays in the economy, and the critical role that securitization, in turn, serves in commercial real estate,[13] it is imperative that regulations impacting the securitization market not be viewed in isolation. Potential rules should be considered in the context of the impact they could have on the securitization market and the economy, so that a balanced and practical approach can be developed that meets Dodd-Frank objectives while minimizing unintended consequences that could significantly restrict the amount of capital that is available in the CRE finance market.[14]

Commercial real estate continues to be adversely affected by the prolonged economic recession, particularly the fundamental metrics such as poor consumer confidence and business performance, high unemployment, and depreciation of property values. At the same time, the CRE industry faces an increasing number of mortgage maturities for which capital will be required, either in the form of debt or equity, to avoid further declines in commercial property values. Through 2017 for example, approximately $600 billion of CMBS loans and more than $1.2 trillion in outstanding commercial mortgages will mature. Borrower demand to re-finance these mortgages will be at an all-time high.

The CMBS market continues to show slow progress toward revitalization, unlike some of the other categories of asset-backed securities. There was $12.3 billion in CMBS issuance in 2010. And $30-$40 billion in issuance is expected in 2011. While these figures are small compared to the $238 billion in issuance in 2007, the progress is timely given the number of CRE loan maturities in the next few years. But future issuance will depend on economic conditions and, importantly, the outcome of numerous proposed regulatory and accounting changes. There are serious questions about the viability of the CMBS market when considering the combined impact of reforms on the market, including the credit risk retention rules the Commission is jointly considering with the federal banking and housing regulators,[15] as well as other requirements imposed by Dodd-Frank.

[13] Both the previous and current Administrations share the view that "no financial recovery plan will be successful unless it helps restart securitization markets for sound loans made to consumers and businesses – large and small." Remarks by Treasury Secretary Timothy Geithner Introducing the Financial Stability Plan (Feb. 10, 2009) available at http://www.ustreas.gov/press/releases/tg18.htm.

[14] "[T]he Commission has a unique obligation to consider the effect of a new rule upon 'efficiency, competition, and capital formation….'" *Business Roundtable v. SEC*, No. 10-1305 (D.C. Cir. July 22, 2011) (slip op. at 6)(quoting 15 U.S.C. §§ 78c(f), 78w(a)(2), 80a-2(c)).

[15] Proposed Rule, Credit Risk Retention, 76 Fed. Reg. 24090 (Apr. 29, 2011).

In recommendations to Congress, the Federal Reserve included an admonition that the totality of the regulatory changes that are being put into motion – including the various new disclosure and credit rating agency reform provisions included in the Act, the securitization accounting changes that must be effectuated, the new Basel capital requirements regime, and European Union Solvency II risk retention requirements – should be considered to develop a rational overall framework for appropriate alignment of risk.[16] While the Federal Reserve made this observation in the context of discussing risk retention rules, it is no less applicable here: new regulatory requirements that will impact the securitization markets should appropriately take into account the regulatory framework as a whole, investor needs, and market realities.

[16] *See* Board of Governors of the Federal Reserve System, Report to Congress on Risk Retention (October 2010), at 84, available at http://federalerserve.gov/boarddocs/rtpcongress/ securitization/riskretention.pdf ("[R]ulemakings in other areas could affect securitization in a manner that should be considered in the design of credit risk retention requirements. Retention requirements that would, if imposed in isolation, have modest effects on the provision of credit through securitization channels could, in combination with other regulatory initiatives, significantly impede the availability of financing.").