



November 22, 2010

The Honorable Timothy F. Geithner
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue
Washington, DC 20551

John E. Bowman
Acting Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

John G. Walsh
Acting Comptroller of the Currency
250 E Street, SW
Washington, DC 20219-0001

The Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429-9990

Re: Implementing Section 941 (Regulation of Credit Risk Retention) of the Dodd-Frank
Wall Street Reform and Consumer Protection Act of 2010 for ABCP Conduits,
Sponsors, Support Providers and Their Customers

Ladies and Gentlemen:

The American Securitization Forum (the "ASF")¹, on behalf of the ASF ABCP Conduit Sponsor Subforum, ASF ABCP Financial Intermediary Subforum and ASF ABCP Investor Subcommittee, submits this letter to express our views relating to implementation of Section 941 (Regulation of Credit Risk Retention) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act"). In particular, this letter discusses concerns regarding the possible application of the credit risk retention obligations to asset-backed commercial paper

¹ The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

(“ABCP”) conduits of the type described below, to their sponsors and credit and liquidity support providers (“support providers”), and to customers of ABCP conduit sponsors (“Customers”) that finance assets through such ABCP conduits to the extent such financings meet the definition of ABS under the Act.

ASF supports reforms within the securitization market and we commend the regulatory agencies for seeking industry input prior to proposing rules on this critically important issue. Over the past decade, ASF has become the preeminent forum for securitization market participants to express their views and ideas. ASF was founded as a means to provide industry consensus on market and regulatory issues, and we have established an extensive track record of providing meaningful comment to various regulators on issues affecting our market. Our views as expressed in this letter are based on feedback received from our broad membership, including our conduit issuer and investor members.

We support efforts to align the incentives of issuers and originators with securitization investors and believe these incentives should encourage the application of sound underwriting standards by both the originator and securitizer in connection with the assets that are securitized. We believe that risk retention may aid in achieving this goal so long as the requirements are tailored to each class of securitized assets. This letter will address ASF’s views concerning the implementation of Section 941 of the Act as it relates to ABCP. We also have or intend to submit letters addressing our membership’s views relating to ABS backed by other assets, including auto loans, credit card receivables, student loans and residential mortgages.

Section 941(b) of the Act requires the Federal Deposit Insurance Corporation (“FDIC”), the Federal Reserve Board of Governors (“FRB”), the Office of the Comptroller of the Currency (“OCC”), the Securities and Exchange Commission (the “Commission” and collectively, the “Joint Regulators”) to jointly implement rules to require any “securitizer”² to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an “asset-backed security”³, transfers, sells, or conveys to a third party. Section 941(c) of the Act sets forth the general standards for retention by requiring a securitizer to retain “(i) not less than 5 percent of the credit risk for any asset” or “(ii) less than 5 percent of the credit risk for an asset...if the originator of the asset meets the underwriting standards prescribed under paragraph (2)(B).” The regulations prescribed under Section 941(b) must specify “the permissible forms of risk retention” and “the minimum duration of the risk retention.” In addition, the regulations “shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the Federal banking agencies and the Commission deem appropriate.”

As used in this letter, the term “ABCP conduit” means a special purpose entity that (i) issues highly-rated ABCP, (ii) uses the proceeds thereof to acquire or finance financial assets,

² We note that Section 941(a) amends the Securities Exchange Act of 1934 (the “*Exchange Act*”) to include a definition for the term “*securitizer*” which is, generally, an issuer of Exchange Act ABS or a person who organizes and initiates an Exchange Act ABS transaction by transferring assets to the issuer.

³ We note that Section 941(a) amends the Exchange Act to establish an alternative definition of “*asset-backed security*” that is broader than the existing definition set forth in Regulation AB.

and (iii) has access to committed liquidity from one or more highly-rated liquidity provider(s) in an amount not less than the face amount (i.e., principal plus interest through maturity) of all of its outstanding ABCP. Most ABCP conduits are also supported by credit facilities⁴ from highly-rated providers, the sizes of which vary.⁵ “ABCP conduit” is not intended to include ABCP issued by structured investment vehicles or market value CDOs, by way of example, that do not have access to committed liquidity in support of the issuer’s obligation to pay the ABCP in full on its maturity date.

A. INTRODUCTION

ABCP conduits typically finance numerous, diverse and frequently-changing pools of assets (often including revolving asset pools). ABCP is issued on a continuous basis and maturing ABCP generally is repaid from the net proceeds of new issuances of ABCP, rather than from the cashflows on the underlying assets. If an ABCP conduit cannot issue ABCP for any reason, the outstanding ABCP is generally repaid from the liquidity provided by highly-rated providers. And, if liquidity is not available in a sufficient amount (e.g., due to the occurrence of losses on the financed assets in an amount that exceeds all available asset-level credit enhancement), a conduit’s ABCP is expected to be repaid from the program-wide credit enhancement.

ABCP investors base their investment decisions on several factors, including the track record of the program, the conduit sponsor’s policies and experience, the creditworthiness of the financial institution(s) that provide liquidity and credit support, the conduit’s investment guidelines, the conduit’s disclosure practices and the circumstances in which the conduit may be prohibited from issuing ABCP—in which case the asset performance risk shifts to the liquidity and credit support providers who are required to repay the maturing ABCP. ABCP investors understand that the payments on the financed assets are not expected to be the source of payment on the short-term ABCP they are buying and that they must continuously monitor the foregoing factors. Most of these structural protections are not present in traditional asset-backed securities.

The ASF firmly believes that risk retention requirements should be specifically tailored for each major class of asset-backed securities. Different types of loans and securitized assets present wide variations in expected credit and performance characteristics. Given this variability, any blanket, one-size-fits-all retention requirement would not reflect important differences in the expected credit and performance characteristics of each asset as well as the related securitization structures. The Board of Governors of the Federal Reserve System, in its recently published Report to the Congress on Risk Retention, concurred in this assessment, stating:

[S]imple credit risk retention rules, applied uniformly across assets of all types, are unlikely to achieve the stated

⁴ Certain ABCP conduit programs may have one agreement that provides both liquidity and credit support in one facility.

⁵ Although the liquidity and credit support for the vast majority of ABCP conduits are provided by their financial institution sponsors, some ABCP conduits obtain liquidity and credit support from third-party providers.

objective of the Act—namely, to improve the asset-backed securitization process and protect investors from losses associated with poorly underwritten loans ... Given the degree of heterogeneity in all aspects of securitization, a single approach to credit risk retention could curtail credit availability in certain sectors of the securitization market. A single universal approach would also not adequately take into consideration different forms of credit risk retention, which may differ by asset category. Further, such an approach is unlikely to be effective in achieving the stated aims of the statute across a broad spectrum of asset categories where securitization practices differ markedly ... In light of the heterogeneity of asset classes and securitization structures, practices and performance, the Board recommends that rulemakers consider crafting credit risk retention requirements that are tailored to each major class of securitized assets.⁶

For the reasons described in this letter, we are of the view that the risk retention obligations of the Act do not by their terms apply to sponsors of ABCP conduits or other support providers to such ABCP conduits. We are further of the view that the Joint Regulators should exercise their regulatory discretion to explicitly exempt from the credit risk retention requirements of the Act ABCP conduits and Customer transactions financed by ABCP conduits that meet the definition of ABS under the Act.

B. SPONSORS AND SUPPORT PROVIDERS ARE NOT SECURITIZERS SUBJECT TO RISK RETENTION

ABCP conduit sponsors and support providers do not meet the requirements of a securitizer that is subject to the risk retention obligations under Section 941, since these entities do not transfer, sell or convey assets to a third party through the issuance of an "asset backed security." Sponsors only provide administrative services that are contracted for. Support providers provide only credit and liquidity support to ABCP conduits. It is the Customers of the ABCP conduit that securitize the financial assets financed by ABCP conduits within the meaning of the risk retention rules. Any regulations issued would therefore not properly impose risk retention obligations on these sponsors and support providers. If the Joint Regulators disagree with this interpretation and adopt the view that the Act applies to conduit sponsors and support providers, we believe that the purposes of the risk retention provisions of the Act would not be served by imposing any additional risk retention obligations of these parties. Sponsors and support providers already assume substantial risk with respect to the assets financed by ABCP conduits through the liquidity and credit facilities that they provide.

⁶ The Board of Governors of the Federal Reserve System, Report to Congress on Risk Retention, available at <http://federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.pdf>, p. 3, 83-84.

C. APPLYING THE RISK RETENTION OBLIGATIONS OF THE ACT TO ABCP CONDUITS WOULD SERVE NO USEFUL PURPOSE

Subjecting an ABCP conduit to the risk retention obligations of the Act would serve no useful purpose. An ABCP conduit simply acts as an issuance vehicle for transactions structured by its sponsor. While not a securitizer in the context of ABCP issuance as discussed above, the sponsor of an ABCP conduit or other third party support provider already assumes significant risks of the assets financed by the ABCP conduit through the liquidity support and credit enhancement facilities described herein and therefore have substantial incentives to apply appropriate underwriting standards to ABCP conduit securitization transactions. Accordingly, the stated purpose of the risk retention provisions of the Act—to “help ensure high quality underwriting standards”—would not be served by requiring the ABCP conduits themselves to retain credit risk.

D. THE RISK RETENTION REQUIREMENTS OF THE ACT SHOULD NOT APPLY TO CUSTOMERS OF ABCP CONDUITS

As discussed above, ABCP investors rely on several factors, including the credit of the support providers, the ABCP conduit’s investment guidelines and its policies and procedures, in addition to Customer-provided credit enhancement. Because of these features, rating agencies rate ABCP issued by ABCP conduits primarily on the basis of the rating of its support providers. Similarly, 2a-7 funds and the other sophisticated purchasers of ABCP review these programs to ensure that the sponsor has structured the ABCP conduit to ensure the availability of the credit and liquidity facilities to cover all outstanding ABCP. Their interest, and that of the rating agencies, in the underlying Customer assets is primarily ensuring that the sponsor and support providers underwrite each transaction in a manner that causes the structure of the ABCP conduit program to provide such liquidity and credit support.

Unlike term ABS that are generally sold in a wide distribution to investors that are not afforded the opportunity to negotiate directly with ABS issuers, ABCP conduit sponsors and support providers negotiate the terms under which Customer assets will be financed directly with their Customers. The sponsor and support providers receive from the Customer the information, representations, and indemnities they require under their policies to finance those assets. Because the sponsor of an ABCP conduit or other third party support provider already assumes significant risks of the assets financed by the ABCP conduit through the liquidity support and credit enhancement facilities described herein, these entities have substantial incentives to ensure that Customer transactions are underwritten appropriately.

Given these factors, the credit risk retention requirements for those transactions are best left to the individual negotiations among the sponsor and support providers to the ABCP conduit and the Customer. We therefore believe that Customers who finance assets through ABCP conduits in transactions that meet the definition of ABS under the Act should not be subject to the credit risk retention obligations of the Act.

E. CONCLUSION

For the reasons stated above, we are of the view that sponsors of ABCP conduits and other support providers to ABCP conduits were not intended to be subject to the credit risk retention obligations of the Act. We further believe it would be appropriate to exempt ABCP conduits and their Customers who finance assets through ABCP conduits in transactions that meet the definition of ABS under the Act from the credit risk retention obligations of the Act.

The ASF very much appreciates the opportunity to provide the foregoing comments. Moreover, the ASF would welcome the opportunity to discuss the matters addressed in this letter in an in-person meeting with the staff of the Joint Regulators at your convenience. Should you have any questions or desire clarification concerning the matters addressed in this letter, please do not hesitate to contact me at 212.412.7107 or tdeutsch@americansecuritization.com or ASF's outside counsel on this matter, Tim Mohan of Chapman and Cutler LLP at 312.845.2966 or mohan@chapman.com.

Sincerely,

A handwritten signature in black ink that reads "Tom Deutsch". The signature is written in a cursive, slightly slanted style.

Tom Deutsch
Executive Director
American Securitization Forum