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Department of Treasury
Office of the Comptroller of the Currency
http://www.regulations.gov
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219
12 CFR Part 43
Docket Number OCC-2011-0002

Securities and Exchange Commission
http://www.regulations.gov
100 F Street, NE
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary
17 CFR Part 246
File Number S7-14-11
RIN 3235-AK96

Board of Governors of the Federal Reserve System
http://www.regulations.gov
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Jennifer J. Johnson, Secretary
12 CFR Part 244
Docket No. R-1411
RIN 7100-AD70

Federal Housing Finance Agency
RegComments@fhfa.gov
Fourth Floor
1700 G Street, NW
Washington, DC 20552
Attention: Alfred M. Pollard, General Counsel
12 CFR Part 1234
RIN 2590-AA43

Federal Deposit Insurance Corporation
Comments@FDIC.gov
550 17th Street, NW
Washington, DC 20429
Attention: Comments, Robert E. Feldman,
Executive Secretary
12 CFR Part 373
RIN 3064-AD74

Department of Housing and Urban Development
http://www.regulations.gov
Regulations Division
Office of the General Counsel
451 7th Street, SW
Room 10276
Washington, DC 20410-0500
Docket Number FR-5504-P-01

Re: Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Credit Risk Retention Proposed Rules

Ladies and Gentlemen:

Wells Fargo & Company ("Wells Fargo") welcomes the opportunity to provide comments regarding the jointly proposed credit risk retention rules (the "Proposed Rules") implementing the requirements of section 15G of the Securities Exchange Act of 1934 (15. U.S. C. Se. 78o-11) as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Section 941").

EXECUTIVE SUMMARY

Meeting the financing needs of American families and businesses requires a large and well-functioning securitization market. Bank balance sheets alone cannot satisfy this demand. We also believe that securitizers must make visible and lasting commitments to improving the quality and transparency of securitizations. The Proposed Rules offer an important tool in instilling discipline in the process of securitization where assets are routinely earmarked for distribution. For these reasons, we appreciate the leadership of the various Federal agencies involved (the "Agencies") in developing the Proposed Rules.

A few key principles underpin our recommendations in this comment letter. Our intention is to help shape the finally adopted rules in a manner that serves customers, promotes sustainable and privately-capitalized securitization markets, and facilitates liquidity and access to credit for all borrowers. In this regard, the risk retention rules need to work to prevent abuses but they should not be crafted so tightly such that securitization becomes unattractive or impossible.

With respect to the residential mortgage securitization market, the proposed definitions for Qualified Residential Mortgages ("QRMs") and non-QRMs will initially affect only a very small portion of the mortgage market because a securitization market without any government guarantee has, with only very limited exceptions, not existed during the past three years. The Proposed Rules, however, will provide an important framework under which a healthy private-label ("RMBS") market will operate if it is to re-emerge and Wells Fargo believes that a vibrant RMBS market is essential.

We would like to summarize some of our major concerns, and the related suggestions for changes in the Proposed Rules that will be discussed in more detail in this comment letter.

1. Servicing standards for QRMs. We believe that the proper treatment of borrowers is a matter of critical importance and that all customers – not just those whose loans are securitized – be treated with the same standard of care. That is why we support the continued focus by the Federal regulators on developing national servicing standards for all types of residential mortgage loans. However, under the Proposed Rules, the rights of borrowers related to loan servicing would depend upon whether their loans are included in certain RMBS pools as opposed to others, or not securitized at all. Accordingly, we recommend that the Agencies delete the servicing standards contained in the proposed Rules that would only apply to QRM loans.

2. Underwriting standards for QRMs. The underwriting standards embedded in the definition of the exemption from the base risk retention requirement for QRMs must be crafted so that borrowers obtaining QRMs as well as non-QRMs may benefit from sufficient liquidity for those loans. In this regard, we believe that the Agencies should attempt to encourage as close to an equal balance as possible in the size of the QRM and non-QRM markets. This will be important for two reasons. First, that balance should produce an equal opportunity for both QRM and non-QRM loans to develop broad market acceptance. Second, making non-QRMs a substantial segment of the market will ensure that lenders provide credit to these borrowers. Therefore, based upon the extensive research and analysis that we have conducted as discussed in this letter below, Wells Fargo recommends that the proposed definition of a QRM should be modified to correspond to the maximum loan-to-value and maximum debt-to-income standards identified in the preamble of the Proposed Rules as the "Alternative Approach."

3. Balance sheet consolidation issues. We believe that risk retention rules should be designed without impairing securitization as a reliable means of asset finance. In addition to providing a funding source, an important benefit of many securitizations is asset transference from the balance sheet of a lender/sponsor under current accounting rules, thereby freeing up capital for new origination. Therefore, it is essential that risk retention options be available that would not produce balance sheet consolidation. One such form of risk retention that would not result in consolidation and which is permitted under the Proposed Rules involves retaining a representative sample of the securitized assets. Unfortunately, however, the conditions included in the Proposed Rules to the availability of the representative sample form of risk retention are unworkable. In view of this concern, we offer several suggestions for how to modify those proposed conditions. Similarly, the vertical slice form of risk retention is another type of retention that can avoid balance sheet consolidation for sponsors of many typical RMBS, CMBS and other forms of securitization transactions. However, this result would be frustrated by the additional proposed requirement that sponsors also hold a premium capture reserve account. We propose revisions that we understand are consistent with the intent of the regulators so that this additional requirement would not adversely impact the vertical slice form of risk retention.

4. Premium capture cash reserve account provisions. We understand that the Agencies may have included the premium capture provisions in the Proposed Rules because of a concern that sponsors may otherwise avoid retaining the required amount of risk in a securitization. While we agree that securitizers should not be able to avoid their risk retention responsibilities, we believe that there are legitimate circumstances under which loans are originated at premiums and securities are sold at premiums. These premiums are not created to offset required risk retention but rather so that originators can recover origination and hedging costs. Without the ability to sell loans at a premium, many residential mortgage borrowers would be prevented from financing their closing costs and from locking their interest rates in connection with their purchase or refinancing of a home. As currently drafted, the premium capture reserve provisions would effectively eliminate securitization as a means of financing non-QRM loans and other types of assets, thereby producing a dramatic reduction in the availability of credit for consumers. In our comments, we offer several improvements specifically related to RMBS that would preserve the intent of this proposal for that asset class, without causing adverse impacts on borrowers and without having a chilling effect on responsible securitizations. In context of CMBS, we believe the premium capture provisions are wholly unworkable. This is particularly the case where securitization sponsors rely on horizontal retention by a third party, known as the B-piece buyer option, to satisfy the retention requirement. In those specific transactions as we explain in our comments, the premium capture provisions do not serve any articulated purpose. If included in the final rules, the issues raised by these provisions (significantly higher costs of funds and, for many businesses, a general lack of available credit) cannot be solved by the solution proposed either here in our comment letter in the context of RMBS or otherwise as we have yet heard suggested in the market dialogue around these rules.

5. B-piece buyer option and quality CRE loan exception. We appreciate the Agencies effort to provide a menu of options to satisfy retention requirements or to structure a transaction under an available exemption. Specifically as relates to CMBS, the specialized B-piece buyer option as a form of compliance and the qualifying commercial real estate ("CRE") loan provisions as a possible exception are vital to the continuation of healthy CRE securitization markets. Unfortunately, as currently constructed, neither of these provisions works to meet their stated purpose. In our comments we walk through the related provisions in detail in an effort to make clear the reasons why the provisions will not work. We also propose some possible revisions

that both solve the problem and retain the integrity of the basis for the Agencies' inclusion of these principles in the Proposed Rules in the first place.

6. Certain transactions not in scope of Section 941. Lastly, we include a discussion of a variety of transaction structures that have been swept into the scope of the Proposed Rules, we believe mistakenly or ill-advisedly. Collateralized loan obligation transactions ("CLOs") do not have "Sponsors" as defined in Section 941. Further, CLOs, resecuritizations, corporate repackages and tender option bonds are all securitizations supported by previously existing securities. Imposition of the risk retention requirements on these structures will have absolutely no bearing on origination discipline and will interfere with important financing and risk management tools for American businesses. In our comments, we discuss each of these structures in detail and suggest either exclusion from the Proposed Rule or, in the alternative, specifically defined exceptions. Similarly, while specifically addressed by the Proposed Rules, we argue that asset backed commercial paper conduit structures also do not have Sponsors within the meaning of Section 941 and further, particularly in context of structures with 100% liquidity support, are not asset backed securities. We urge the Agencies to exclude ABCP from any final rules.

INTRODUCTION

In addressing the Proposed Rules, we have divided our response into three groupings of asset classes. In the first section of the letter, we discuss the rules impacting RMBS. Wells Fargo is the largest residential mortgage lender in the U.S. As such, we are in a unique position to consider, for instance, the ramification of the proposed QRM definition on the availability of funding through the securitization markets as the ultimate credit to various classes of residential borrowers. Similarly, we employ the second largest servicing operation and can provide feedback based upon our extensive experience regarding the practicalities and other issues associated with the proposed servicing standards applicable to QRMs.

Next, we address risk retention in context of the other forms of asset classes that Wells Fargo originates. Specifically, Wells Fargo is the largest commercial real estate loan originator, which, for instance, gives us the unique ability to evaluate statistically the relationship between the qualifying loan concept and performance. Through its broker-dealer subsidiary, Wells Fargo has a significant CMBS distribution capability and has regular discussions with subordinate or "B-piece" buyers and, with that, an ability to provide recommendations for workable solutions to the Agencies concerns in this area. In this letter we provide some contextual information on the commercial real estate loan asset class and CMBS transactions that differentiate it from other asset classes and securitization markets that we believe the Agencies should consider in crafting the final rules. We continue to work on some recommendations and will propose those to the Agencies in a supplemental submission.

Lastly, we consider the Proposed Rules as they relate to asset classes that we characterize as "secondary market securitizations" or that we otherwise believe were not intended to be captured by Section 941 at all. These asset classes, including structures such as CLOs, TOBs, resecuritizations, corporate repackages and ABCP, are not founded on an originate-to-distribute model. Rather, the assets of these structures are acquired in the secondary market. Risk retention will have no impact on responsible origination. For this group of asset classes we depart from our strong support of the principle of risk retention and the Proposed Rules generally. In this section, we outline our arguments for this position on each asset class and offer some alternatives that we believe should address the Agencies concerns about these structures.

I. RESIDENTIAL MORTGAGE BACKED SECURITIES

A. EXEMPTION FOR QRM LOANS

Definition of QRM Loans

While there appears to be growing agreement that a greater portion of U.S. housing should be financed with private capital, rebuilding the trust necessary to attract sufficient private investment will not be easy. Therefore, consistent with the views expressed in the Executive Summary, we believe that lasting confidence in securitizations will only be restored when all parties share responsibility: lenders for offering appropriate, sustainable products to borrowers and for ensuring that all loans are properly underwritten; intermediaries for the quality and transparency of the securities they sell; and investors for thoroughly evaluating the assets they purchase. In this regard, the Agencies have done a commendable job in attempting to design a QRM definition that meets the requirements of the statute and attempts to exempt only "very safe" loans. We also believe that this is a very challenging set of loans to define and that three primary objectives should be pursued in order to achieve the correct mix of QRM and non-QRM loans. The first objective is defining loans for which the risk of default is so low that credit risk retention is unnecessary. The second objective is to establish liquid markets for both QRM and non-QRM loans, which we believe may be accomplished by creating a balanced mix of each loan type. Finally, any regulations must ensure the availability of home financing to a broad spectrum of consumers and communities, meaning that the QRM definition should avoid any unnecessary reduction in the availability or affordability of mortgage credit.

Accordingly, in order to satisfy these objectives and based upon research we have conducted on our own recently-originated mortgage loans, we propose that the following changes be made in the Proposed Rules: the parameters for QRM loans should be expanded to allow for different maximum loan-to-value ("LTV") and debt-to-income ("DTI") combinations; and such LTV and DTI combinations for the QRM definition should conform to the "Alternative Approach" described by the Agencies in the preamble of the Proposed Rules. While Wells Fargo had previously suggested that the Agencies apply certain LTV standards in order to achieve a balanced mix of QRM and non-QRM loans, we believe that this balance can also be achieved through the adoption of the Alternative Approach. We also suggest that the standards applicable to maximum points and fees at origination for inclusion in the QRM definition need to be identical to the standards for such points and fees in the definition of a Qualified Mortgage ("QM").

In order to analyze the specific impacts of the proposed QRM criteria, we performed an extensive amount of research on our current loan portfolio of conventional mortgage loans originated through our retail sales channel from late 2008 until early 2010. We found that 34% of those mortgage loans would qualify as a QRM loan under the proposed definition and that such QRM loans showed a default rate[1] of slightly less than 0.10%. It should be noted that this analysis included conventional loans that would qualify for sale to Federal National Mortgage Association ("Fannie Mae") or Federal Home Loan Mortgage Corporation ("Freddie Mac" together, the "GSEs"), and such GSE transactions would be exempt from risk retention under the

[1] We calculated "default rate" using any mortgage loans that were ever 90 days past-due.

Proposed Rules[2]. Therefore, the relevant population of non-GSE loans that would qualify as QRM loans could be a much smaller portion of the residential mortgage market. Especially because this subset of total mortgage originations is so small, establishing the appropriate size of the total population of both QRM and non-QRM loans within the non-GSE residential mortgage sector will help ensure the liquidity in the securities markets for both categories of loans.

Furthermore, ensuring the availability of home financing to a broad spectrum of consumers and communities will require healthy and liquid securities markets for all types of loans. If this is not the result, there could be a continued migration to Federal Housing Administration ("FHA") mortgage loans.

In view of the foregoing concerns, we would suggest that the Agencies attempt to achieve as close to an equal balance as possible between QRM loans and non-QRM loans, while simultaneously establishing QRM criteria that evidence loans with a relatively lower risk of default. As stated above, in order to determine how this optimal liquidity mix of QRM and non-QRM loans could be accomplished, we performed an extensive amount of research on our recently-originated loans. The majority of loans that did not meet the current QRM criteria based upon our portfolio analysis did so because of the LTV requirements, or combined loan-to-value ("CLTV") requirements, with the second largest category of loans failing to meet the QRM standards due to the DTI standards.

Specifically, our analysis concluded that applying the LTV and DTI maximums under the Alternative Approach would achieve a more balanced population of QRM loans and non-QRM loans, while also maintaining a similar risk of default rate for QRM loans under the proposed definition. In particular, we found that the QRM definition contained in the Proposed Rules produced a 34% concentration of QRM loans and a 66% concentration of non-QRM loans within our analyzed portfolio but that a more balanced mix of 57% QRM and 43% non-QRM resulted from the application of the maximum DTIs and LTVs contained in the Agencies' Alternative Approach. Importantly, we also found that the aggregate default rate changed from slightly below 0.10% to approximately 0.15% when applying the standards under the QRM definition in the Proposed Rules versus the standards for the QRM definition under the Alternative Approach, which is still a historically low default rate.

Based upon the foregoing, we believe that sufficiently liquid markets can be created for both QRM and non-QRM loans in all loan categories while also maintaining a substantially low expected risk of default for the QRM loans by revising the current proposed LTV and DTI maximums to correspond to the maximums included in the Alternative Approach (i.e., 90% maximum CLTV for purchase mortgages as well as for rate and term refinancings; 75% maximum CLTV for cash out refinancings; and 33% and 41% DTI for maximum front-end and back-end qualifying ratios).

In addition, we support requiring some form of credit enhancement for any QRM loan with a CLTV over 80%. Finally, in order to reduce the operational complexities that would otherwise be faced by mortgage loan originators, the standards for maximum points and fees to be included in the QRM definition must be the same as the maximum points and fees for purposes of the QM definition.

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2 We included GSE loans in our analysis because, with extremely limited exceptions, this is the only securitization market currently available for newly originated mortgage loans and the number of non-GSE loans was relatively small. Therefore, this was the only statistically relevant pool of loans that we could evaluate.

Servicing Standards

The Proposed Rules require that the originator of a QRM loan include terms in the mortgage transaction documents (i.e., the mortgage or the promissory note) that describe certain servicing policies and procedures that would need to be followed by the initial and any subsequent servicer of the loan. For the reasons explained below, we believe that this proposal is ill-advised in several respects.

Firstly, we strongly urge the Agencies to remove these requirements from the definition of a QRM loan and, instead, consider servicing practices in the context of the larger current effort among the government agencies to create national servicing standards. Specifically, the Proposed Rules would require any servicer of a QRM loan to have policies and procedures in place to mitigate the risk of default by performing certain loss mitigation actions, such as modifications or other alternatives, if the net present value exceeds the net present value of recovery through foreclosure. In addition to various other standards, the mortgage documents for a QRM loan must also state that any servicer must take into account the borrower's ability to repay and other appropriate underwriting criteria in such loss mitigation actions. While we understand the intent of these rules is to enhance current servicing practices, we believe that there is a better way of achieving this goal. In that regard, the joint effort among the federal regulators to develop national minimum servicing standards would be the most appropriate manner for addressing servicing issues, especially since jointly-adopted national standards would apply to a wider range of mortgage loans rather than subjecting a relatively small group of mortgage loans to untested requirements. At a minimum, this piecemeal adoption of regulatory requirements would create confusion for both borrowers and servicers, since QRM loans might be serviced differently from non-QRM loans. It also may result in an impossible compliance regimen for servicers given that QRM loans might need to comply with both the QRM standards and national servicing standards.

Secondly, by embedding loss mitigation requirements in the mortgage transaction documents, the Agencies will be creating an inflexible environment if they later revise the servicing standards due to unforeseen consequences or otherwise. In this connection, any QRM loan that had been originated prior to such revisions would contain out-dated servicing standards, and inconsistent loss mitigation procedures may result for borrowers, servicers and lenders.

Finally, including servicing provisions in the QRM definition will produce the perverse effect of making what otherwise should be relatively high quality QRM loans less attractive to both investors and servicers. Not only would these provisions essentially invite borrowers to assert a defense against foreclosure for QRM borrowers that non-QRM borrowers would not currently possess, but any person foreclosing upon a QRM loan might need to produce documentation illustrating its loss mitigation efforts, which would then be adjudicated upon subjective standards to be applied by a foreclosure judge. Servicers would worry about potential litigation risk challenging their default mitigation activities and investors would believe that a myriad of foreclosure defenses could have a negative impact on the value of the mortgage loans underlying their securities. As a result, the QRM servicing standards could result in an increase of servicing fees for QRM loans and an increase in the price lenders charge to QRM borrowers because of the relatively greater risk that investors would need to bear for QRM loans.

B. FORMS OF RISK RETENTION

Vertical Slice

We generally support risk retention in the form of a vertical slice of each of the issued credit tranches. Following the changes in the accounting rules related to FAS 166/167, sponsors who also service the assets of a securitization are very concerned about any retained risks in a securitization that could cause the securitization to fail accounting sale treatment and thereby force sponsors to consolidate all of the underlying assets of the securitization on their balance sheets. While there is a degree of consensus in the accounting community about what amounts and forms of retention would cause a sponsor to consolidate, there is still some debate around the precise parameters of this. It is our understanding that risk retention in the form of a five-percent vertical slice alone would not cause consolidation for a servicing-sponsor. However, as we address later in our letter, if this form of risk retention is coupled with the premium capture provisions, then even this form of risk retention may force sponsors to consolidate all of the assets of a securitization on their balance sheet. If this were to occur, it would render this form of risk retention unworkable for sponsors.

Horizontal Slice

While we appreciate the Agencies providing sponsors with a menu of permissible forms of risk retention, it is not likely that Wells Fargo Bank would ever be able to utilize the horizontal form of risk retention for RMBS transactions. It is our understanding from discussions with accountants that this form of risk retention — essentially, five-percent of the first loss of the securitization — would cause balance-sheet consolidation for a sponsor who services a majority of the assets in the securitization pool.

L-Shaped Retention

Similar to our comments to the horizontal form of risk retention, it is not likely that Wells Fargo Bank would ever be able to utilize the L-shaped form of risk retention. It is our understanding that even this smaller percentage of the first-loss tranche in the securitization structure would cause the transaction to fail accounting sale treatment and force us to consolidate all of the assets on our balance sheet. Therefore, we request that the Agencies revise the rule to provide for flexibility so that sponsors could retain a percentage of the first loss tranche that would be small enough to achieve accounting sale treatment, so long as sponsors complied with the overall general provisions of five-percent risk retention.

Representative Sample

While we generally support the representative sample form of risk retention, we believe that the proposed provisions need to be revised in order to make this form of risk retention an attainable option for sponsors. We suggest several revisions below, which apply to both the selection process for the representative sample, and maintaining and servicing the representative sample.

Selecting the Representative Sample
The first step in creating a representative sample is for a sponsor to create a pool (a "Designated Pool") of not less than 1000 assets. From this pool the sponsor must pull both the assets for the securitization and the assets for the representative sample. The sponsor selects a random five-percent sample from this pool by using the only allowable initial selection criterion, the unpaid

principal balance of the assets. The sponsor must then test the sample to make sure that it is truly representative of the Designated Pool. The rule goes on to state:

> Prior to the sale of the asset-backed securities as part of the securitization transaction, the sponsor determines, using a statistically valid methodology, that for each material characteristic of the assets in the designated pool, including the average unpaid principal balance of all the assets, that the mean of any quantitative characteristic, and the proportion of any characteristic that is categorical in nature, of the sample of assets randomly selected from the designated pool pursuant to paragraph (b)(2) of this section is within a 95 percent two-tailed confidence interval of the mean or proportion, respectively, of the same characteristic of the assets in the designated pool.

It is unclear what "any quantitative characteristic, and the proportion of any characteristic that is categorical in nature" means and this may not even be possible to achieve given the number of potential characteristics. The discussion in the footnotes of the preamble suggests that there are certain characteristics that the Agencies consider material, such as debt-to-income ratios and geographical concentration. However, leaving the language in the Proposed Rules as broadly as it is currently drafted would expose sponsors to a potential for an endless amount of claims that a certain five-percent sample was not, in fact, a five-percent representative sample with respect to some characteristic that a particular investor deemed material. This exposure may eliminate the representative sample form of risk retention as a viable option for sponsors.

We would suggest three ways for the Agencies to fix this problem. First, the Agencies may allow sponsors to define and disclose in the offering materials what they considered to be the material characteristics of the Designated Pool. So long as on the closing date the representative sample adequately reflected the disclosed material characteristics, sponsors would have satisfied the requirement that the representative sample was reflective of the material characteristics of the Designated Pool.

Another alternative would be to have a third-party determine what the material characteristics of the Designated Pool should be. This third-party could either be a due diligence provider or a person performing the credit evaluation of the securitization, such as a rating agency. The sponsor would then perform the pooling and sampling as provided in the rule and disclose the material characteristics that such third-party provided in any of the offering materials. Again, so long as on the closing date the representative sample adequately reflected the material characteristics provided by the third-party, sponsors would have satisfied their requirement that the representative sample was reflective of the material characteristics of the Designated Pool.

A final alternative would be to allow third-parties to not only determine the material characteristics of the representative sample but to run the pooling and sampling. This third-party could either be the due diligence provider or another party specifically hired for such purpose. The securitization offering materials would contain a description of the third-party, its determination of material characteristics and its pooling methodology, which, pursuant to the current rule, would be subject to an accountant's audit.

It is very important that the rule contain a provision that makes it clear that the representative sample must only be reflective of the material characteristics of the Designated Pool on the closing date. It would clearly be impossible for sponsors to assure that the representative sample remained reflective of the Designated Pool at any other point of time. For example, if one of the material characteristics of the pool is the geographical composition of the assets, if a California loan in the representative sample is prepaid in full three-months following the closing of the securitization, the representative sample may no longer reflect the material characteristics of the Designated Pool.

We also request that the rule clarify that sponsors should compile the representative sample after performing any due diligence on the Designated Pool, including the due diligence as required by Section 945 of Dodd-Frank. This is the only way for this form of risk retention to work in conjunction with the due diligence requirements. However, the Proposed Rules state that the Designated Pool may not contain any assets that are not either securitized or part of the representative sample. Not only does this proposal set a minimum size for any future securitization utilizing the representative sample form of risk retention, which size may not be attainable as the market struggles to restart, but it is unworkable with the due diligence requirements required by Section 945. Even in the absence of any due diligence requirements, it would be common for sponsors to remove assets during any review of a pool upon the discovery of unexpected asset characteristics. Furthermore, sponsors may need to remove assets solely in order to mathematically achieve a truly representative sample of the Designated Pool. We believe that the rule must provide some flexibility to allow for these considerations.

Maintaining and Servicing the Representative Sample
Following the closing of a securitization, the rule states that the sponsor may not remove any assets from the representative sample. While this provision is intended to prevent sponsors from circumventing their retention obligations, it is impractical. Assets should be allowed to be removed in the same manner that they are allowed to be removed from the securitization trust; for example, assets may be removed upon a repurchase by a seller for a breach of a representation or warranty, or in connection with any loss mitigation efforts, such as a foreclosure. So long as these types of actions are performed in the same manner as they are for the securitization trust, we believe that these types of removals must be allowed. In addition, servicers, who pursuant to the rule are not allowed to know which assets are part of the representative sample versus the securitization pool, may require such removals.

The assets in the securitization pool and in the representative sample must be serviced by the same entity. We believe that this requirement should be expanded to clarify that special servicers (or any party performing a similar function) are permitted so long as the policies for transferring the servicing of any assets to such a special servicer provider operate in the same manner for the securitization pool as they do for the representative sample. For example, if the securitization pool has the servicing responsibility for certain delinquent assets transferred to a special servicer, depending on the timing of delinquencies, it is possible that certain of the assets contained in the representative sample may be serviced by a different party than the party servicing the securitization pool.

The Proposed Rules also state that the persons performing the servicing must not be able to identify which assets are in the securitization pool and the representative sample. We believe that this is unworkable. The rule requires that there is separate reporting for the representative sample, such as asset-level reporting, which may not be possible unless the persons processing and monitoring the performance of the assets are able to identify such assets as needing separate disclosure from the securitization pool. The separate reporting for each pool of assets should allow investors to clearly identify if the pools of securitized assets are being treated similarly as the representative sample.

Finally, it is unclear who the Agencies would consider as the persons performing the servicing. The rule would need to clarify that there are certain people, such as credit risk managers, internal auditors and legal advisors within any servicing department that are able to distinguish between pools so that they can adequately serve their roles as necessary overseers and advisors within any organization.

Suggested Additional Forms of Risk Retention – Unfunded Form of Risk Retention

We suggest that the Agencies consider allowing risk to be retained in the form of contractual obligations in addition to funded assets.

Credit enhancement for RMBS comes in two general forms: through the sale of subordinated interests in 'senior/subordinated' securitizations, and through private investment in operating companies that provide guarantees to bond holders. Today, almost 90% of the credit enhancement for RMBS comes in the form of contractual guarantees provided by Fannie Mae, Freddie Mac, FHA, and private mortgage insurance companies. While senior subordinated securities should play a large role in the future of housing finance, it is unclear how much the $5.5 trillion of outstanding guaranteed RMBS can be transitioned to this model. Thus, as U.S. housing finance is reformed, access to both subordinate bond investors and investors in guarantee-providing operating companies ("Operating Companies") will likely be necessary in order to provide sufficient and reasonably priced home ownership. In light of this, as they consider risk retention rules, we would urge the Agencies to consider allowing the option for sponsors of securitizations to retain their vertical or horizontal risk positions in a contractual (unfunded) form.

Allowing risk to be retained in contractual form will permit policy-makers more options for housing finance reform, increase the overall pool of private capital that can be accessed, and help to mitigate the impact of housing finance privatization on borrowing costs. For example, investors in private Operating Companies that also act as securitization sponsors may be less willing to maintain (and finance) large balance sheets of funded retained interests (which introduces additional risks beyond credit risk implicit in the business model). This would result in making this form of capitalization through Operating Companies less efficient and more expensive if risk can only be retained in the form of a funded asset.

In addition, we believe that holding risk in contractual form may reduce the capital burden of retained securitization interests on regulated institutions if and when this becomes a real concern. However, we also appreciate the Agencies' desire that sponsors have actual revenue/equity at risk through risk retention and believe that contractual interests might be structured in a way to reduce up-front securitization earnings and only accrue earnings to the extent that losses are not realized. If counterparty risk is a concern, the Agencies could limit this option to regulated and well-capitalized institutions.

In summary, since it is almost certain that capitalizing the bulk of the housing finance system through private sources will require both internal and external RMBS credit enhancement mechanisms, we urge the Agencies to consider allowances under which risk could be retained in contractual form.

C. PREMIUM CAPTURE RESERVE FUND

We are extremely troubled by the premium capture cash reserve account provisions of the Proposed Rules. The premium capture provisions would profoundly change residential mortgage loan origination practices and would eliminate securitization as a means of financing non-QRM loans and other types of assets, thereby producing a dramatic reduction in the availability of credit for consumers. We believe that implementation of these provisions as drafted would result in (i) substantially higher premiums being imposed upon consumers for interest rate locks, (ii) originators being prohibited from recovering their origination costs and expenses, and (iii) balance sheet consolidation of many securitization structures by originators who also service the mortgage loans underlying such securitizations. These results would likely make securitizations uneconomical for most originators. While we understand that the Agencies may believe that the monetization, or even the mere creation, of excess interest may result in sponsors effectively holding less than the 5% base risk retention requirement, we find it important to note that excess interest is created in many securitization structures for reasons that serve the legitimate needs of borrowers and investors alike. For the reasons set forth in greater detail below, we strongly urge the Agencies to remove the premium capture provisions from the final rule or, in the alternative, specifically with respect to RMBS consider modifying these provisions as discussed below.

Impacts to Consumers

One of the most important tools originators use when originating mortgage loans is an interest rate hedge. When a borrower is offered an interest rate lock on a mortgage, originators need to enter into an interest rate hedge agreement in order to protect themselves from the risks associated with fluctuating interest rates. In addition, originators also use interest rate hedges to protect themselves from changes in the value of mortgage loans, which also fluctuate with interest rate movements. Generally, if interest rates increase then the value of a loan would decrease, and pursuant to the terms of the interest rate hedging contract, the originator would receive a payment to cover its loss in the value of loan. Conversely, if interest rates decrease and the loan value rise, then the originator's loss is the amount that it paid for the interest rate protection.

Interest rate locks are also invaluable to borrowers when anticipating their costs associated with obtaining a mortgage. However, rate locks increase an originator's exposure to interest rate movements by creating a 60 or 90-day commitment to fund a mortgage loan at a given rate despite market fluctuations. If originators have no means to mitigate this exposure, they will either refuse to provide a borrower with a rate-lock or charge substantially more for a rate-lock in order to off-set any of the originator's potential risk. Not only are rate locks essential for borrowers, but they are essential to any seller of real estate, such as building developers, who rely upon committed buyers.

The premium capture provisions, however, do not allow sponsors to fully realize any gain in the value of an underlying loan when it is sold to a securitization, which gain would be used to off-set the costs of any hedging contract. In addition, the provisions do not allow sponsors to realize the payment on the interest rate hedge to cover any losses in the loan value when that loan is sold to a securitization. Accordingly, the practical result of the premium capture provisions will be that originators will look to make adjustments by either quickly moving loans from origination to securitization, by refusing to offer borrowers any interest rate locks, or by charging substantially higher premiums for any interest rate lock.

We believe that the possible outcomes described above would be contrary to the spirit of the Dodd-Frank Act. Adopting a rule that would have the effect of encouraging originators and securitizers to move mortgage loans from origination to securitization more rapidly may mean that some market participants may not devote sufficient attention to important practices such as performing adequate due diligence, thereby creating a hasty securitization market similar to the market that existed prior to the credit crisis. In addition, interest rate locks allow a borrower to obtain certainty about one of the largest costs, namely, the applicable interest rate, associated with their home purchase. We are concerned that the premium capture provisions may greatly increase the costs of this essential tool and the price of home ownership will rise.

In addition, the premium capture provisions would alter the way origination costs are recovered when mortgage loans are securitized, which will in turn restrict some borrowers' access to credit. Originators generally offer borrowers a spectrum of loan pricing tailored to a borrower's individual needs. For example, borrowers who choose to fund their closing costs with cash at origination may also choose to pay discount points in exchange for lower interest rates. Thus, closing costs may include these discount points as well as origination fees covering the originator's overhead and ordinary out-of-pocket costs of the originator such as appraisals and title insurance. Borrowers who need assistance in funding their closing costs, or who prefer not to access their cash reserves to pay some or all of their closing costs, may choose to pay a higher rate, with a component of the rate used by the originator to defer the closing expenses. This component of the rate will be reflected as excess interest and will be recouped by the originator when it sells the mortgage loan to a securitization. However, the premium capture provisions disallow the recovery of these costs and expenses upon sale to a securitization. In addition, if the initial upfront costs of purchasing or refinancing a home increase, certain borrowers who are unable to pay these amounts upfront may be excluded from the housing market altogether.

Securitization-Market Impacts

We are also very concerned that the Proposed Rules would unfairly penalize the sponsor of a securitization structure in which the interest rates on the assets in the securitized mortgage pool exceed the interest rates paid by the securitization on its principal/interest bond liabilities. This positive spread differential is a valuable asset of the sponsor and historically part of the collateral sold to a securitization for distribution, as is the principal balance of the mortgage loans themselves. While in some transactions the related cash flow remains in the securitization as excess spread to provide enhancement to the transaction liabilities, in other transactions this spread is sold onward by the securitization to investors as a senior security in the form of an interest-only ("I/O") bond or premium bond. As with the other principal/interest securitization liabilities, while an I/O bond or premium bond has potential upside, these securities also have real risk, or potential downside, to an investor. If interest rates in general decrease and mortgagors are able to refinance at lower rates, their existing mortgage loans are paid off and the corresponding excess spread value decreases accordingly. I/O bonds, therefore, are subject more to prepayment and interest rate risk than principal/interest bonds, in addition to being subject to default risk. For example, if all of the underlying mortgagors in a securitization paid off their mortgage loans early, the investors in the I/O bond could still be subject to substantial losses on their initial investment, while the investors in the principal/interest bonds would be repaid in full. Rather than requiring the Sponsor to retain 5% of the credit risk of such an I/O or premium bond position, the Premium Capture Provisions require that the Sponsor retain 100% of this liability in addition to the required 5% credit risk retention of the other securitization liabilities. This result is unnecessarily punitive and will have a profound liquidity impact on many market participants such that it could threaten the viability of their businesses.

The premium capture reserve fund would act as a first loss position in the securitization in addition to the other interests that sponsors would be required to retain. Although bright line tests have not yet been developed to determine the limits on what amount of first-loss retention is allowable without causing consolidation for sponsors who also service a majority of the assets, there seems to be a general consensus that any required premium capture reserve fund coupled with another required form of risk retention would likely cause a servicing-sponsor to have to consolidate its securitization transaction on its balance sheet. Balance sheet consolidation, along with the inability to recover costs and expenses upon sale to a securitization, would likely make securitizations uneconomical for most originators.

Alternative Approaches to Premium Capture

It is our understanding that the Agencies proposed the premium capture provisions either to reduce the gain-on-sale that sponsors receive when securitizing mortgage loans, or to ensure that sponsors were, in fact, retaining their required 5% of risk. If the Agencies' objective was to reduce a sponsor's gain-on-sale, because of the negative impact of premium capture as discussed herein to potential homeowners, we believe that addressing this concern by revising certain accounting standards is a better way of achieving this goal.

With respect to the Agencies' concern that sponsors may "manipulate the system" and circumvent the base five-percent risk retention requirements, we suggest that the Agencies consider this possibility by assessing such an outcome in relation to the various forms of risk retention permitted. For example, it is important to stress that the vertical slice form of risk retention cannot be manipulated to circumvent five-percent risk retention. This is the case because the very nature of that form of retention is based upon a valuation method for each five-percent retained *pro rata* slice of each securitized class that is set as a simple proportion of the aggregate market prices paid by third party investors for the other 95% pro rata share of each such securitized class. Therefore, any incremental retention on the vertical slice form of risk retention is unnecessary. However, if the premium capture provisions remain applicable to vertical risk retention, the calculation should be based upon the aggregate "fair value" of the securitization rather than the "par value" as stated in the Proposed Rules to prevent the negative consumer impacts highlighted above.

It is also our understanding that a primary concern of the Agencies may have been about the possible use of the horizontal form of risk retention to avoid the five-percent base risk retention requirement. In this regard, we recommend that the Agencies revise the premium capture rules for sponsors using the horizontal form of risk retention in connection with residential real estate in various respects. First, as stated above, the premium capture calculation should be based upon the aggregate "fair value" of the securitization rather than the "par value" as stated in the Proposed Rules. In addition, the premium capture provisions applicable to horizontal risk retention could include the following conditions: (1) the retained interests must absorb the first five-percent of losses before any other class is allocated losses; (2) the coupon on the retained subordinate bonds must equal the net weighted-average-coupon of the collateral; (3) the retained classes can only receive their coupon(s) and share of scheduled principal until after a reasonable lockout period when they may start to receive their share of unscheduled principal; and (4) 10% of the classes representing the retained subordinate bonds must be sold in order to establish market value or, alternatively, an independent third-party must provide a valuation of the retained bonds.

We should also note that while Wells Fargo is unlikely to use the horizontal risk retention approach for residential mortgage securitizations for which it acts as a sponsor, this approach will likely be relevant for a large segment of various types of asset securitizations and other sponsors. We encourage the Agencies to consult with those sponsors for other ideas related to premium capture and horizontal risk retention.

The supplementary information to the Proposed Rules states that the Agencies expect that due to the premium capture provisions few, if any, securitizations would be structured to monetize excess spread at closing. Unfortunately, if the premium capture provisions remain in the Proposed Rules without amendment we believe that few, if any, securitizations would be structured at all, as many originators will exit the securitization markets entirely due to the inability to recover costs and expenses and the likelihood of balance sheet consolidation. Meeting the financing needs of American families and businesses requires a large and well-functioning securitization market. The potential elimination of a large portion of that market would have a dramatic affect on the availability of credit for consumers and could negatively impact our economic recovery

D. FANNIE MAE AND FREDDIE MAC

We support the treatment of Fannie Mae and Freddie Mac transactions as exempt from the risk retention provisions in the Proposed Rules. We also believe that Congress and the Federal regulators should carefully consider how any substantial changes in the operating models of Fannie Mae or Freddie Mac associated with GSE reform or the possibility of new risk retention requirements could impact borrowers' access to credit and the cost of credit.

In addition, we believe that the Fannie Mae and Freddie Mac exemption should be expanded to include resecuritizations of their RMBS securities into agency Collateralized Mortgage Obligations ("CMOs"). The Proposed Rules explicitly state that agency-CMOs do not, on their face, comply with the resecuritization exemption set forth in the Proposed Rules. It is our understanding that if the resecuritization is structured as a single class then it may be able to achieve compliance with the exemption, but even this is unworkable, as these transactions are currently structured with multiple classes. A significant amount of liquidity for agency MBS is derived from the re-securitization of agency RMBS into CMOs. Such securitizations include multiple tranches providing investors with their desired combination of yield and mortgage prepayment protection and do not involve credit risk "tranching." However, under the Proposed Rules, these transactions would be prohibited due to their multiple tranches and such a result would have adverse consequences on the market for conforming mortgage loans.

E. SUNSET OF RISK RETENTION

As stated elsewhere in our letter, we generally agree with risk retention as a tool to better align the interests of originators and securitizers; however, we believe that the benefits of risk retention diminish after a certain period of time and, therefore, so should the risk retention requirements. Furthermore, we would also suggest that the distinction of loans as either QRM loans or non-QRM loans should also expire.

The purpose of risk retention is to reduce the likelihood that lenders originate low-quality assets with "manufacturing defects" and securitizers pass those assets to investors. Due to privacy laws protecting borrower information and securities laws such as Regulation FD, investors are rarely able to obtain complete information about each asset in the securitization pool. While we agree that the sharing of risk in future losses should help align incentives of transaction parties, we believe that this objective can be achieved by sponsors sharing risk for a reasonable period of time and that the required risk retention need not be permanent.

It is generally recognized that defaults of residential mortgage loans due to origination defects typically occur in the early years of a loan (usually performance problems arise within the first two-years following origination). After this period, defaults may occur but such defaults tend to be caused by future "life events," such as an illness, a divorce or a loss of a job, which are unknowable to any party at the time of the origination of a mortgage loan. Accordingly, we believe that risk retention has diminishing marginal utility following two-years after a mortgage loan is originated. Therefore, for residential mortgage loans, we recommend that sponsors should be allowed to sell or hedge any required risk retention shortly after this period, such as four-years after the closing of the securitization.

We also believe sun-setting is consistent with Section 941, which allows the Agencies to set the duration of risk retention. It is our view that this provision in the statute demonstrates that Congress intended the Agencies to consider whether risk retention should expire prior to the maturity of a securitization, especially in cases where the objectives of Section 941 are met with a shorter duration period. Typically, residential mortgage loans have thirty-year maturities. Accordingly, without the expiration of risk retention, it is possible that sponsors would have to retain securities, or, if applicable, a representative sample of mortgage loans, for up to thirty-years following a securitization. While we acknowledge that many securitization transactions have clean-up call rights that usually result in a designated transaction party terminating a transaction prior to the maturity of each of the underlying assets, the precise timing of any such termination is dependent on many circumstances and, therefore, difficult to estimate.

Finally, sponsors must certify that they have adequate procedures in place to ensure that securitized pools of QRM loans do not contain any non-QRM loans. If a non-QRM loan is found in a certified-QRM pool, then the sponsor must repurchase such mortgage loan. We believe that, two-years after the issuance of a securitization, this repurchase provision should expire for performing mortgage loans. First, after a period of time the QRM/non-QRM distinction is no longer dispositive evidence of a lower-risk of default. Rather, the loan's performance history already provides the evidence that the loan has a lower-risk of default. Further, as a securitization seasons, investors of certain securitization tranches may be incentivized to begin scrubbing the securitization pool for minor, technical breaches of the QRM qualifications solely in order to force a repurchase of mortgage loans at par plus accrued interest. We believe that due to some of the complexities and subjectivity of the QRM qualifications, investors could force repurchase reviews for very minor exceptions even if such exception would not have a material impact on the value of the mortgage loan or indicate a lack of quality in the origination process. In addition, securitization documents require originators to repurchase mortgage loans for certain material breaches of representations and warranties, and such remedy would remain after the QRM/non-QRM distinction is removed.

II. <u>OTHER WELLS FARGO ORIGINATED ASSET CLASS SECURITIZATIONS</u>

A. CMBS

As noted in our introductory paragraphs, Wells Fargo appreciates the Agencies' efforts to draft a proposed rule that implements the spirit and framework of Section 941 of Dodd Frank and we recognize the challenge of adapting that framework across numerous and diverse asset classes and complex transaction structures. In the context of CMBS, we particularly appreciate the Agencies effort to address the concern that the Proposed Rule must be a tailored response by providing CMBS securitizers a menu of options for satisfying the requirement, such as permitting compliance through the B-piece buyer and providing specific criteria for qualifying CRE loans.

We do, however, have concerns about the particulars of those options, which we believe require some clarification and revision in order to be viable in the market. As previously articulated we also have significant concern regarding the Premium capture provisions and believe that they should be removed from the Proposed Rule. Without addressing these concerns we believe the rules as crafted will have a material chilling effect on CMBS issuance which provides a valuable and necessary source of credit to U.S. businesses, large and small, that provide jobs, services and housing to our population and feed the growth of our economy.

We believe that it is important for the Agencies to consider the elements that differentiate CMBS from other asset classes, including, most significantly, the nature of the underlying CRE loans and the historical disclosure practices of CMBS transactions as a general overlay to our comments on the Proposed Rule as it relates to CMBS.

CRE loans are used to finance various types of commercial properties, including office buildings, hotels, apartment buildings, warehouses, and retail complexes. Unlike residential mortgages, CRE loans are negotiated with sophisticated commercial borrowers and most often collateralized by large commercial properties with established cash flows in the form of rent paid by the tenants of such commercial properties. CRE loans principally rely on that cash flow and the credit risk of a CRE loan is predominately based on such cash flows and much less dependent on the credit risk of the borrower. As a part of all CRE loans the lender performs an extensive due diligence on the property, including analysis of the geographic market, the income producing qualities of the property and the characteristics of the borrower. Most importantly, the due diligence includes a review of tenants, rent rolls and the operating income of the underlying property. Much, if not all, of the information gathered during the lender's due diligence process is included in the extensive disclosure made available to all CMBS investors which includes loan-level detail, summary information regarding the operating statements and rent rolls, lease abstracts, loan documents, third party reports (e.g., appraisals, environmental and engineering reports) and access to asset summaries regarding individual properties.

While we acknowledge that improvements may still be made to address evolving transparency and diligence requirements, the CMBS market has a history of good disclosure practice and the transactions completed since the restart of the CMBS market in 2010, and the development of specific industry standards by the Commercial Real Estate (CRE) Finance Council ("CREFC"), have only served to improve that disclosure. As previously noted, much of the disclosure in a CMBS transaction is focused on the underlying property and its ability to produce sufficient cash flows to support the CRE loan. Recent CMBS transactions have incorporated the CREFC Annex A initial disclosure package ("Annex A") and the Investor Reporting Package ("IRP")™ for ongoing disclosure. Both Annex A and the IRP was developed by CREFC with the participation of all CMBS constituencies, including CMBS investors, and represents the current accepted market practice. Annex A is provided to investors with the CMBS offering documents and it provides detailed loan-level and property-level information regarding the underlying CRE loans, including, among others, the largest tenants, occupancy rates, rent rolls, operating cash flow and LTV. The IRP provides updated loan-level and property-level information to investors on a monthly basis and financial information regarding the properties is updated and provided to investors quarterly.

In addition to the loan-level and property-level disclosure, current transactions disclose all of the representations and warranties made regarding each underlying CRE loan with an explanation of any exception taken to those representations and warranties. Such exceptions are to be expected and are an acceptable aspect of CMBS transactions because the representations and warranties are based on factual information regarding specific loans and such loan's unique underlying commercial property collateral. Further, the CMBS market has historically recognized investor involvement and feedback, including the participation of the investor holding the first loss risk position (the "B-piece buyer"), in selecting and servicing the underlying CRE loans. We believe that the commercial nature of the underlying CRE loans, the significant level of disclosure and the involvement of the B-piece buyer in CMBS deals should be viewed by the Agencies as an appropriate control against unhealthy lending practices and should mitigate against the type of regulations that may be more appropriate for asset classes where these practices do not exist, and thus should be taken into consideration as the Agencies consider modifications to the current proposals regarding risk retention for CMBS transactions as suggested in this letter.

Below we discuss our primary concerns with the Proposed Rules as it relates to CMBS which include, among others (1) the premium capture reserve account, (2) specific issues related to the CMBS B-piece buyer option including, among others, the scope of the powers granted to the operating advisor and the restrictions on transferability, (3) the proposed criteria for "qualifying CRE loans" and (4) where retention requirements are permitted to be satisfied by third parties or where multiple Sponsors exist in a transaction, the need for the Sponsor (or the one identified Sponsor) to monitor and report on the other parties' compliance with the risk retention requirements.

Premium Capture Cash Reserve Account

As mentioned elsewhere in this comment letter, we are extremely troubled by the premium capture cash reserve account provisions of the Proposed Rule and, in the context of CMBS, strongly opposed to the concept. We believe that application of these provisions to the CMBS market will have an acutely detrimental effect on the continued viability of the CMBS market and therefore dramatically increase the cost of credit and even the general availability of credit for commercial real estate ("CRE") loans. While we understand that these provisions are intended to prevent Sponsors from monetizing excess spread in a way that would circumvent the risk retention requirements, our analysis indicates that the provisions will actually tend to work in opposition to the broader risk retention objectives by incentivizing originators to move assets into a securitization quickly in order to limit interest rate risk. Therefore, we strongly urge the Agencies to remove these provisions from the risk retention regulations.

When the interest rates on CRE loans sold into a CMBS securitization trust exceed the amount of interest demanded by investors on the securitization bonds a positive spread differential is created, which can be monetized by selling I/O bonds. This positive spread differential is a valuable asset of the Sponsor and historically part of the collateral sold to a securitization for distribution, as is the principal balance of the CRE loans themselves. The value of this asset is underscored by the availability of sophisticated third party buyers of I/Os. Investments by third parties in I/Os are made following a return/risk assessment based on robust disclosure and available diligence on the CRE assets producing this positive spread differential, as well as the structure of and cash flows in the transaction. As with the other principal/interest securitization liabilities, while an I/O has potential upside, these securities also have real risk, or potential downside, to an investor. If interest rates in general decrease and CRE mortgagors are able to refinance at lower rates, their existing CRE loans are paid off and the corresponding excess spread value decreases accordingly. I/O Bonds therefore are subject more to prepayment and interest rate risk than principal/interest bonds, in addition to being subject to default risk. I/Os have been included in substantially all CMBS transactions closed since 2000 and there is no indication that any of those transactions were necessarily more complex or otherwise encouraged aggressive underwriting of the underlying CRE loans. Cumulative defaults[3] have remained below 20% and cumulative losses have been less than 3%, respectively, for fixed-rate conduit CMBS transactions closed since 2000[4]. Rather than requiring the Sponsor to retain 5% of the credit risk of such an I/O, the Premium capture provisions require that the Sponsor retain 100% of this liability in addition to the required 5% credit risk retention of the other securitization liabilities. This result is unnecessarily punitive and will have a profound liquidity impact on many CRE market participants such that it could threaten the viability of their businesses.

In addition to the general costs of doing business, originators of CRE loans incur out of pocket costs in connection with the origination of a CRE loan that could not otherwise be recovered in connection with a securitization as a result of the premium capture provisions. These include costs related to obtaining appraisals, environmental reviews, title insurance and credit reviews, as well as site inspection fees, interest rate hedges[5] and other expenses. As discussed previously, the premium capture provisions would essentially disallow recovery of these types of costs at the time of securitization. In order to recoup these costs, originators would be compelled to raise costs to borrowers, either in the form of upfront points and fees or by charging higher interest rates. For CRE loan originators who need to recover these costs upfront in order to maintain sufficient liquidity to fund their operations, this would likely result in these costs being charged at the time of asset origination.

Even for large CRE loan originators such as Wells Fargo, with access to capital to fund their ongoing businesses on an interim basis while awaiting returns following release of the premium capture reserve and other required risk retention at maturity, the cost of that capital will still necessarily increase interest rates charged to CRE borrowers.

Additionally, we note that in the case where risk retention requirements are met through the B-piece buyer option, the proposed premium capture provisions do not serve their articulated purpose of preventing a Sponsor from structuring transactions to negate or reduce the economic exposure such party is required to hold under the Proposed Rules. Proceeds from the sale of an IO or premium bond do not reduce potential losses to the B-piece buyer. Rather, imposition of the premium capture cash reserve as a practical matter negates the congressionally suggested option of meeting retention requirements in CMBS transaction through third party first loss holdings by none-the-less requiring further retention by the Sponsor in addition.

In the RMBS section of our response we discuss the option of calculating retention on fair market value as opposed to par value, which in context of vertical risk retention, could solve the Agencies' concerns behind the premium capture provisions proposal. Unfortunately, in context of CMBS, where risk retention is sought to be satisfied through the horizontal holdings of a third

[3] Defaults are loans reaching 60+ days delinquent.
[4] Structured Products Research, CMBS & Commercial Real Estate, CMBS Weekly, Wells Fargo Securities, LLC, May 20, 2011, p 24.
[5] Similar to residential loan originators, CRE lenders often hedge their exposure to interest rate risk with respect to CRE loans. As stated above under section I.(C), the premium capture provisions would not allow the originator to realize the gain in the underlying loan value to cover its costs of paying the hedge counterparty.

party, reliance on a fair value calculation does not work. We direct you to the Commercial Real Estate Finance Council ("CREFC") response to the Proposed Rules filed with the Agencies last week for a full discussion of this point. Wells Fargo is a member of this group and was an active participant in crafting the CREFC response. Reverting to a calculation of risk retention based on fair value would mean that the B-piece buyers will have to own a significantly larger portion of the transactions to meet the 5% requirement – which would eliminate that investor market.

We believe that the over-all effect of the premium capture provisions will make CMBS transactions non-economic for many Sponsors and will eliminate a vital source of funding to the credit markets and U.S. businesses.

B-piece Buyer Option and Special Operating Advisor

Wells Fargo appreciates the Agencies efforts to provide a menu of options for satisfying the risk retention requirement and in particular for the CMBS specific option of allowing a third party purchaser, subject to certain conditions, to satisfy the risk retention requirement (the "B-piece buyer option"). In Section 941 Congress specifically cited the B-piece option as a viable form of risk retention and recognized it as an alternative to Sponsor risk retention.[6] In addition, the Federal Reserve Board in its report to Congress regarding Risk Retention recognized the flexibility provided by Section 941 and further recommended that given "the heterogeneity of asset classes and securitization structures, practices and performance, … rulemakers consider crafting credit risk retention requirements that are tailored to each major class of securitized assets."[7] As an independent form of risk retention, the B-piece buyer option in the Proposed Rules acknowledges the mandate of Section 941 of Dodd-Frank and the recommendations of the Federal Reserve Board by providing much needed flexibility to the risk retention rules and recognizes the impact and importance of the B-piece buyer in the CMBS market. However, the conditions applicable to the B-piece buyer option in the Proposed Rules raise significant issues that will likely prevent this option from being used in its current form.

Justification for the B-piece buyer option is in large part based on the important control function served by the B-piece buyer. The B-piece buyer performs an extensive, independent due diligence review of all underlying loans, including visiting all of the properties that serve as collateral for the underlying CRE loans, resulting in a re-underwriting of each of the CRE loans in the CMBS pool. During this re-underwriting process the B-piece buyer has the ability to remove loans from the pool and to request other structural changes to the CMBS transaction. The oversight and review powers granted to the B-piece buyer provide an incentive to the originator to carefully underwrite the credit risk of the underlying CRE loans at origination so that its loans are not removed from the CMBS pool at a later date by the B-piece buyer. The B-piece buyer review occurs on essentially every CMBS conduit deal before the investment grade bonds are offered to other bondholders. When considering the B-piece buyer option, it is critical that the Agencies give considerable weight to the re-underwriting that is performed by the B-piece buyer, as well as the significant benefit this re-underwriting process this has on the origination of the CRE loan and the information available regarding the quality of the CRE loans underlying a CMBS transaction. This re-underwriting of each individual loan in every CMBS transaction is something that is not required, or performed, in almost any other asset class and it functions, in part, to appropriately align the interests of the originators with investors regarding the credit risk of the underlying CRE loans. It is equally important that the Agencies realize and

[6] Dodd-Frank Section 941(b), Section 15(G)(c)(1)(E);
[7] Board of Governors of the Federal Reserve System, Report to Congress on Risk Retention (October 2010), at 83 (available at http://federalserve.gov/boarddocs/rtpcongress/ securitization/riskretention.pdf).

give significant consideration to the fact that the B-piece buyer reviews the risk of the pool from the perspective of one who willingly invests its own capital to hold the first loss risk. These two important aspects of the B-piece buyer's function should be kept in mind as the Agencies consider our commentary on the details of the B-piece buyer option. Imposing conditions that in fact discourage B-piece buyers would increase risk to the CMBS market and be counterintuitive.

Set forth below are our specific concerns with respect to each of the proposed conditions of the B-piece buyer option.

§__.10(a)(1). The first condition under the B-piece buyer option is that the collateral consists of "commercial real estate loans". While generally the concept and definition are fine, we would like to request clarification that loans to special purpose entity borrowers secured by commercial real estate, which is the typical structure in the CRE market, are permissible even if that borrower is a subsidiary of a REIT. We note the specific exclusion of loans to REITs themselves which gives rise to this specific concern.

§__.10(a)(2). The second condition under the B-piece buyer option is that the B-piece buyer cannot "obtain financing, directly or indirectly, for the purchase of [its] interest from any person that is a party to the securitization". Wells Fargo provides various lending facilities to CMBS investors, including B-piece buyers, and may have a facility outstanding to a B-piece buyer that is unrelated to the particular securitization and may have been in place well before the securitization was even contemplated. It is unclear from the text of the Proposed Rule if these types of facilities would be prohibited. We request that the Agencies clarify that if the B-piece buyer has other corporate facilities outstanding from the Sponsor or any other party to the securitization that are not entered into for purposes of a specific securitization that those facilities are not prohibited by this section.

§__.10(a)(3). We support the requirement that the B-piece buyer perform a review of the credit risk of the CRE loans in the CMBS pool, including a review of underwriting standards, collateral and expected cash flows. This level of review is currently the industry standard and is done by B-piece buyers and is a clear indication of the strength of the credit review process for CMBS transactions.

§__.10(a)(4). The fourth condition under the B-piece buyer option would prohibit the B-piece buyer from being affiliated with any other party to the securitization or from having control rights in the securitization (including acting as servicer or special servicer). However, this condition is subject to an exception if the transaction documents appoint an independent operating advisor to monitor the activities of any servicer related to the B-piece buyer. In addition, the Proposed Rules provide that if the operating advisor determines, in its sole discretion that the servicer has failed to comply with servicing standards set forth in the transaction documents the operating advisor shall have the authority to recommend that the servicer be replaced by a successor servicer. The operating advisor's recommendation to replace the servicer can only be overturned if a majority of the bondholders of each class eligible to vote on the matter vote to retain the servicer.

While we do not have an issue with the general concept of an operating advisor, we do think that as contained in the Proposed Rule the power of the operating advisor to monitor the actions of, and replace, the special servicer will have an overwhelmingly negative impact on the marketability of the B-piece. We are confident that most B-piece buyers will not be interested in taking on the first loss risk position if the operating advisor is granted such broad powers. The

Proposed Rules state that the justification for imposing the operating advisor concept is to minimize the ability of the B-piece buyer through control of special servicing to manipulate cash flows, thereby forcing the B-piece buyer to more carefully re-underwrite the CRE loans that go into the CMBS pool. The B-piece buyer already has a significant incentive for carefully re-underwriting the CRE loans underlying a CMBS pool and granting the operating advisor such broad powers is an unnecessary reallocation of power away from the B-piece buyer that will severely curtail B-piece investment by third parties, which as noted above, in the context of the diligence they perform, is valuable to the entire CMBS market.

While tension naturally exists between the B-piece buyer, the special servicer and other bondholders in the typical CMBS transaction we would point out that the current CMBS market has developed a concept similar to, but less harmful than, the Agencies' operating advisor concept in the Proposed Rule. This new concept was first introduced in the Treasury Department's Term Asset-Backed Securities Lending Facility ("TALF") program and has been further developed by CMBS market constituents, including B-piece buyers, issuers, trustees, master servicers and senior bondholders, and is applied whether the B-piece buyer is related to the servicer or not. In this regard, the market has come to a consensus regarding the duties and powers of the operating advisor and we recommend that the Agencies consider this market driven resolution as an alternative to the operating advisor concept in the Proposed Rule. Specifically, the operating advisor's ability to review the activities of and recommend the removal of the special servicer should only be allowed after the B-piece buyer's position is reduced to less than 25% of its original principal balance and that any recommendation to remove the special servicer must be approved by bondholders having at least a majority of the aggregate voting rights. We also request that the Agencies clarify that the operating advisor concept only applies to review of the special servicer and not any other servicers, including master servicers.

§__.10(a)(5). The fifth condition under the B-piece buyer option is that the Sponsor must disclose information regarding the B-piece buyer, and the sale of the B-piece, including the amount paid for such interest. This is problematic for both the Sponsor and the B-piece buyer because the pricing is negotiated between the parties based on a number of variant factors, and this information is proprietary and confidential. Additionally, the amount of the purchase price paid for the B-piece has no bearing on the pricing of the more senior notes. Requiring such disclosure will most certainly have a chilling effect on the investment activities of traditional B-piece buyers and provides no material benefit to the other investors. Accordingly, the requirement to disclose the identity of the B-piece buyer and the purchase price should be deleted from the final rule.

§__.10(a)(6). The sixth condition under the B-piece buyer option generally prohibits the B-piece buyer from transferring its interest and imposes obligations on the Sponsor to maintain and adhere to policies and procedures to monitor the B-piece buyer's compliance with the risk retention requirements and to notify the bondholders in the event of noncompliance by the B-piece buyer.

We believe that the transfer restrictions imposed by the Proposed Rule will effectively negate the B-piece buyer option. Investors in CMBS do not want, and because of fiduciary obligations or fund requirements cannot accept, restrictions on their ability to freely trade an asset. In addition, the Proposed Rules do not consider the fact that certain transfers are required and beyond the control of the B-piece buyer, including, for instance, transfers due to unforeseen changes in tax, accounting, regulatory or capital allocation rules and regulations, as well as transfers to avoid insolvency or in a bankruptcy proceeding. Such transfer restrictions are not part of the current market for CMBS bonds and especially not the B-piece. Even if buyers can be found, which we think is not likely or at least not likely in enough volume to support a robust CMBS market, the illiquid nature of the B-piece will dramatically increase the rate of return required by potential B-piece buyers making CMBS a far less efficient, if not prohibitive, financing option. If the transfer restriction requirement is included in a final rule we strongly urge the Agencies to revise the rule to incorporate the concept of a "qualified transferee" who would certify that it has performed the same due diligence and had the same access to information regarding the underlying CRE loans as the initial B-piece buyer and that such transfer restrictions expire after a specified term of three years. Furthermore, it is not within the power of the Sponsor to monitor the B-piece buyer's compliance with the risk retention requirements and a better approach would be to have the B-piece buyer certify its compliance annually.

Qualifying CRE Loan

The concept of a "qualifying CRE loan" that would be exempt from the risk retention requirements is a necessary and welcome addition to the Proposed Rules. However, the standards set forth in the Proposed Rules would restrict qualifying CRE loan status to only a tiny fraction of existing CRE loans. Recent research found that "most of the outstanding CMBS universe would not qualify for the retention exemption" and that "[i]n fact, …fewer than 200 loans, out of over 70,000 CMBS loans ever securitized, …met a combination of" the qualifying CRE loan requirements contained in the Proposed Rule.[8] As proposed, the current qualifying CRE loan definition is essentially a meaningless provision and will not provide the CMBS market a viable alternative for risk retention, which is in stark contrast to the significant accommodation give to RMBS with its "qualified residential mortgages" exception. We do not believe that this is the intended outcome given the relatively superior performance of CMBS structures over the last several years.

Underwriting CRE loans is a very specialized process and it is difficult to specify bright line criteria that would in all cases determine whether a CRE loan is a high quality loan. CRE loans encompass various property types, including, among others, multifamily, retail, office, industrial, hotel and mixed use, each of which is originated according to slightly different underwriting standards. Underwriting criteria that might be acceptable for a premier office property in a major metropolitan area would not be acceptable for strip mall in a small rural area. Property type and geography are just two of the numerous items that are considered when underwriting a CRE loan and any standard criteria for qualifying CRE loans needs to allow for a certain amount of flexibility. Assuming that lenders will seek to originate qualifying CRE loans, without a certain level of flexibility in the underwriting criteria, some borrowers or geographic regions could experience more constrained credit as they would be left out because their loans would not meet the qualifying loan criteria. With respect to the specific underwriting criteria set forth in the Proposed Rule regarding qualifying CRE loans our concern is that the proposed criteria do not reflect actual lending standards and, therefore, do not provide a realistic option for CMBS transactions.

The requirement that a CRE loan payment be based on a straight-line amortization not to exceed 20 years is not reflective of any CRE loans that Wells Fargo (or likely any other lender) underwrites as part of its securitization program. The market standard is 30 year amortization and very often, depending on other factors and when warranted by the cash flow of the

[8] Securitized Products Strategy: Retention Rules Feature Much Flexibility and a Few Surprises, Citigroup Global Markets (April 1, 2011), at 5.

underlying property, interest only periods are frequently allowed during the life the CRE loan. Interest only periods should be expressly allowed if the LTV of the CRE loan is 50% or less. This is the level considered by most lenders to be a reasonable credit risk given that at maturity the loan will still be extensively overcollateralized with a significant margin of safety for the lender.

The requirement that the lender conduct an analysis of the borrower's ability to service its overall debt obligations during the next two years, based on reasonable projections, is not realistic given that the borrower is typically a newly formed special purpose entity whose only assets and liabilities are the property, including cash collected from the property, and the loan, respectively, and CRE loans are typically nonrecourse. Additionally, the structure of the borrower aside, such a requirement wrongfully places an emphasis on the borrower's ability to pay when, in CRE, credit underwriting is based more heavily on the income generating potential of the properties.

The prohibition regarding the creation or existence of subordinate debt secured by the collateral is contrary to market practice and ignores the significant investor demand for that type of debt. For instance in large loan or single borrower transactions discussed in more detail below, the securitization structure only issues investment grade debt. Mezzanine lenders provide subordinated debt to these same borrowers outside of the securitization transaction but are secured by the same properties on a subordinated basis. Transactions are structured to contemplate the total debt obligations of a borrower or income producing property, and with full disclosure to the securitization investors. Borrowers use subordinate debt to support their business operations and to refinance existing debt.

The required minimum DSCR levels set forth in the Proposed Rule are not necessarily reflective of higher quality loans. Our research of CRE loans originated in vintage CMBS deals since 2000 indicates that a change in DSCR from 1.7 to 1.5 is not predicative of higher defaults. Even a change from 1.5 to 1.2 is only predictive of slightly higher defaults. Also, DSCR is overly dependent on interest rates and in a low rate environment can give the impression that debt service coverage is adequate when it may not be adequate in a higher interest environment. Currently the CMBS market uses minimum debt yield as a more reliable predictor of lower credit risk. Minimum debt yield is a credit metric that is not skewed by interest rates and is the product of net cash flow divided by the CRE loan amount.

Large Loan or Single Borrower CMBS Structures

Although not a part of the current qualifying CRE loan construct in the Proposed Rules, large loan and single borrower CMBS transactions should be considered by the Agencies as exempt from the risk retention rules, either under the qualifying CRE loan concept or some other form of exemption from the Proposed Rules. Single borrower and large loan CMBS transactions typically involve a very limited number of loans (generally, 15-25 CRE loans) and/or a single borrower. The limited number of loans included in single borrower and large loan CMBS transactions tend to be very high quality with low LTV ratios (typically between 50% and 65%). As well, investor analysis is accordingly much simplified. Also, given the higher credit quality of the loans, single borrower and large loan CMBS transactions typically only issue investment grade securities and therefore do not have a B-piece buyer to satisfy the retention requirement (because investment grade securities do not meet the yield requirements of this class of investors). Notwithstanding, the level of disclosure provided in these transactions is comparable to, if not the same as, that provided in multi-seller conduit transactions with subordinate B-piece buyer participants. Whether through the refinement of a Qualifying CRE Loan exemption or the creation of another exemption specific to this structure, we request that the Agencies clarify that single borrower and large loan transactions with less than 25 loan that provide the same Annex A disclosure and IRP reporting packages are exempt from the risk retention rules .

Ability to Combine CMBS Retention Options

Wells Fargo notes that the Proposed Rules allow Sponsors to retain risk in a combination of the vertical slice and horizontal slice in a prescribed ratio (the "L-shaped" risk retention), which acknowledges that combining different forms of risk retention meet the statutory objectives. We believe that this same approach should be taken with respect to other forms of risk retention and should enable Sponsor, B-piece buyer, or other originators to, in combination, retain the necessary level of risk retention so long as, in aggregate, the required minimum is maintained. This flexibility in combining different forms of risk retention would ensure that the rules are not unnecessarily punitive on Sponsors by ultimately requiring greater than the statutorily required minimum and would afford Sponsors the flexibility to create structures that suit their specific business needs. For example, if the B-piece buyer retains a 4.5% interest, the Sponsor should be allowed to retain an additional 0.5% horizontal risk piece to reach the required minimum. Similarly, it is not uncommon in CMBS transactions to have multiple B-piece buyers, therefore, sales of the B-piece to multiple third parties meeting the requirement of the B-Piece buyer option should be permissible if in the aggregate the retention meets the required 5% and each B-piece buyer individually meets the requirements of the regulation.

Allocations Among Multiple CRE Loan Originators

The Proposed Rules in §__.13 allow a Sponsor who chooses to retain risk pursuant to the vertical or horizontal option to, subject to certain conditions, offset a portion of its risk retention by an amount retained by an originator of the securitized assets. One of the conditions imposed by the Proposed Rule is that the originator must retain at least 20% of the aggregate risk retention otherwise required to be retained by the Sponsor. Setting the limit of minimum risk retention at 20% eliminates the possibility of smaller originators participating in the risk retention thus forcing the larger Sponsor to absorb the cost and risk on behalf of the smaller originators. Many of the most recently completed transactions in the CMBS market have included multiple originators with some originating much less than 20%. Sponsors will necessarily need to either charge the smaller originators for the cost of retaining risk on their behalf or, worse, smaller originators will simply be denied access to CMBS markets. Either scenario will have a significant negative impact on CRE loan origination and could disparately impact smaller community banks and the availability of credit to the communities that they serve.

B. AUTOS AND CREDIT CARD SECURITIZATION

Wells Fargo has not historically been a large sponsor of auto loan or credit card securitizations, however, we are committed to the needs of our customers which include access to credit by consumers and businesses large and small. Credit card financing is an important liquidity tool around which the acquisition of goods is structured in the market place. Such credit also provides necessary bridge financing in times of economic difficulty. Healthy securitization markets generally and the market for both auto loans and credit card receivables specifically are vital to support the financing needs of consumers and businesses.

Also, well functioning securitization markets are imperative to assure the ongoing health of Wells Fargo by providing flexibility to increase liquidity or otherwise in the context of balance sheet management. As stated in our introduction, well functioning securitization markets also provide an important tool in the context of living will planning as mandated for Wells Fargo under recent federal regulation.

We note that others who regularly participate in these markets as a Sponsor, as well as various industry lobbying groups, are filing detailed responses to the Proposed Rules as it relates to these asset classes. As stated previously, conceptually we agree with the principal of risk retention in securitization markets such as these, but do also agree that some corrections and clarifications need to be made to the specifics of the Proposed Rules in order to assure the ongoing efficient delivery of credit to American families and businesses via these structures. In its current form the Proposed Rules regarding the securitization of auto loans and credit card receivables will likely result in constricted credit markets, limited financing options and higher costs for consumers and businesses. Because we feel that other parties are in a better position to comment specifically, we have declined to address Auto and Credit Card Securitization here other than to request that the Agencies do consider the remarks and proposals of these Sponsors and industry groups. We are members of, and active participants in, the American Securitization Forum ("ASF") and we plan to make our comments regarding auto and credit card securitization as a member of that group. To the extent that our comments ultimately differ substantially from those of ASF we will provide our own comments in a supplementary submission.

III. SECONDARY MARKET SECURITIZATIONS AND SECURITIZATIONS NOT IN SCOPE OF SECTION 941

As noted in the introductory paragraphs of this letter, while we are supportive of the concept of risk retention in securitizations utilizing an originate to distribute model, we are of the strong view that application of the Proposed Rules to securitization of assets acquired in the secondary market should either not be covered by the Dodd Frank risk retention requirement or be excepted under the authority granted to the Agencies to carve out additional exceptions through rulemaking.

We do appreciate that there are some secondary market asset securitizations, such as CDOs of ABS, that are generally complex and have a poor performance history and understand the Agencies' desire to create greater accountability in the structure of these deals. We are not offering a comment on the application of risk retention to CDOs. Other asset classes that are swept into the definition of asset backed securities under Dodd Frank, however, are clearly distinguishable from CDOs, both in structure and in performance, particularly through the credit crisis of the last several years. Specifically, we would like to address collateralized loan obligations ("CLOs"), resecuritizations, tender option bonds ("TOBS"), corporate repackages ("Repacks") and asset backed commercial paper ("ABCP").

A. COLLATERALIZED LOAN OBLIGATIONS

We believe that a reasonable reading of Section 941 excludes its application to CLOs. Section 941, as written, expressly applies only to "securitizers" which is defined as "a person who organizes and initiates an ABS transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity." No party to a CLO satisfies this definition.

CLOs are pooled investment vehicles that do not follow an originate to distribute model. CLOs acquire syndicated bank loans ("Loans") in the secondary market at negotiated prices as advised by independent third party investment managers. The manager of a CLO does not receive any compensation in connection with the sale of a loan to a CLO. The manager of a CLO is engaged in a fee-for-services business, and the amount of fees a manager receives from a CLO is directly correlated with the performance of a CLO over time.

At initiation, CLO managers typically engage an investment bank to act as arranger and structurer of a CLO. As arranger, the investment bank markets the proposed CLO to potential equity buyers interested in engaging the specific manager participating in the transaction. Together the arranger and the manager, with the input of the equity buyer, set the asset eligibility standards and investment criteria. An equity buyer considers the manager's ability to select assets that will generate the risk/return sought by such equity investor. In some instances, in what is referred to as a reverse inquiry transaction, a potential equity buyer, interested in purchasing CLO equity managed by a specific manager, will initiate the CLO transaction by reaching out to either the specific manager or to an investment bank to arrange a transaction with such manager.

The CLO also issues debt in the form of notes. The notes, usually, have varying degrees of seniority and subordination. The arranger places the CLO issuer's debt to interested and qualified institutional investors. Potential note holders, as creditors of the CLO transaction, also have opportunity for input on the eligibility standards and investment criteria as well as the other structural elements of the CLO. Each of the various tranches of debt of a CLO is typically rated by one or more rating agencies.

The proceeds of the offering of the notes and equity are used by the CLO to purchase Loans that satisfy the eligibility criteria and investment criteria established for the transaction. The CLO manager, in accordance with its management contract with the CLO is required to follow the eligibility and investment criteria established for the transaction when selecting and managing the Loans on behalf of the CLO. A typical CLO ordinarily holds between 150 and 250 loans at any given time. A CLO manager generally selects loans that it believes will provide appropriate risk/returns to the equity and generate sufficient cash flow to pay the note holders. The Loans comprising the collateral of a CLO are generally purchased by the manager through independent third party market purchases on an arm's length basis for fair market value. If a CLO manager is affiliated with the originator of a Loan selected for inclusion in a CLO, the Loan is acquired on an arm's length basis and in conformity with the provisions of the Investment Advisers Act of 1940 governing principal, or affiliated, transactions which include disclosure and consent provisions.

CLOs typically acquire Loans in the secondary market. Many times the Loans are acquired from the lead agent bank of the syndication under the related facility or from one of the other syndicate participants. Each of the initial lenders in the syndicate perform financial due diligence on the borrowers and have input on the terms of the loan and related documentation. CLO managers do not have input on the terms of the loan at origination. The broadly syndicated loans are priced daily by independent third party pricing services and actively traded amongst financial institutions in a secondary market place. Because of the significant trading volume of these loans and investors access to pricing services, the CLO market enjoys far greater transparency than a more standard ABS, which serves as a significant benefit to investors (including CLOs). The managers of CLOs use such available information to perform a credit analysis prior to purchasing a Loan on behalf of a CLO.

The transaction structure, the capital structure, the eligibility and investment criteria, the cash flow waterfalls, as well as the material terms of the investment management contract and relevant facts about the manager itself, among other material information, are all fully described to investors in offering materials.

CLOs are distinct from other securitizations in some very important ways. CLOs do not follow an originate to distribute model. For most securitizations, like RMBS and CMBS discussed above, on the closing date of a securitization, the originators or aggregator- securitizer (usually one or a small number of sellers into a transaction) of the assets to be securitized sell the entire pool of assets. These originators receive a direct benefit of the sale of the assets into the securitization by monetizing the annuity of their financial receivable upfront. In that context, as we have stated, we agree that aligning the interests of the Sponsor of the securitization of these assets with the investor serves a purpose in encouraging the integrity of the origination process. The assets of a CLO change during the duration of a CLO and are not typically fully identified on the closing date. The manager of a CLO selects and purchases the initial Loans in the secondary market during a ramp up period, usually six to nine months, and continues to buy and sell Loans on behalf of the CLO during a reinvestment period (usually [five to seven years]). No singular party, particularly the manager, benefits from the sale of the Loans into the CLO.

The manager of a CLO is engaged in a fee-for-services business, and the amount of fees a manager receives from a CLO is directly correlated with the performance of a CLO over time. CLO managers are compensated on an ongoing basis (typically quarterly) with three tiers of fees calculated as a percentage of non-defaulted assets. Some portion of the fees, usually 15 to 20 basis points are paid at the top of the cash flow waterfall (in general this amounts to about 15-25% of the entire fees earned). The remaining fees are paid only after payment is made to the debt holders of the CLO. The most junior portion of these fees, the incentive fee, is paid only after interest on the debt tranches are paid and the equity realizes a specified rate of return. Therefore, only through a strong performing transaction can a manager be fully compensated and maintain a viable business platform. CLO managers therefore have material "skin in the game" from closing to the maturity of the CLO.

Arguably, CLOs bear much greater resemblance to mutual funds than to ABS. Similar to a mutual fund, managers are paid fees based on performance. Rather than making an investment decision based on the attributes of the specific assets of a securitization as is typical with most ABS, investors in both CLOs and mutual funds make their investment decision predominately based on the perceived abilities of the manager in selecting assets in the market that will meet the risk/return objectives of the investor and based on the appropriateness of the articulated investment criteria for a specific structure. While it is possible for a mutual fund to have a collateral portfolio that is similar or even identical to a CLO, mutual funds, quite correctly, are not subject to the risk retention.

Historically the vast majority of CLOs were managed by investment advisors registered with the SEC under the Investment Advisors Act of 1940, and, going forward, with the changes to the investment advisors registration criteria dictated under Section 941, virtually all CLOs will be so managed.

As well, CLOs, unlike RMBS or CDOs of ABS, have performed well, even through a highly distressed market. Out of 630 outstanding cash flow CLOs, according to recent testimony of the LSTA before the House Subcommittee on Capital Markets, only 2 suffered a payment default. Despite these defaults, investors holding notes rated "A" or above did not suffer losses. While a number of CLO transactions experienced downgrades of the ratings of certain of their note classes, most of the downgrades were associated with changing rating agency criteria made in response to the recent credit crisis. The ratings of a significant number of the downgraded notes have already been restored or improved in 2011 and we anticipate further upgrades as the markets continue to recover.

CLOs serve as a valuable source of credit to both middle market and larger businesses. In 2010 existing CLOs provided approximately $250 billion of financing to such companies which, constitutes nearly 20% of the syndicated loans made to U.S. corporate borrowers - corporate borrowers that need access to credit to continue to run their businesses, employ Americans and over-all feed the U.S. economy[9]. Already significant, the CLO market will necessarily become even more so as banks face new capital rules that will specifically discourage lending to the smaller, non-investment grade companies that are the particular focus of the Wells Fargo CLO business.

Given the foregoing considerations, we believe that there is no practical reason to alter the CLO market and require the manager of a CLO or any other party associated with a CLO to be subjected to the risk retention requirements. Managers do not satisfy the definition of a securitizer under Section 941. Further, requiring risk retention in CLOs will have no impact on the loan origination process. We believe managers, if they are determined to be the sponsors of CLOs in accordance with Footnote 42 of the Proposed Rules, particularly independent managers which make up the majority of managers in this market, do not have the wherewithal to fund the risk retention requirement. As previously noted, CLO asset management is a fee-for-services business and the managers of CLOs tend not to have large balance sheets or significant available liquidity. Beyond the lack of available funds, these managers will also not be able to obtain financing at reasonable cost to continue to grow and add assets under management to their portfolio. If CLOs are subjected to risk retention rules, without making a workable exemption available, we are of the strong belief that this valuable, performing market will be severely curtailed.

For the reasons discussed above, we believe that CLOs should not be subject to the risk retention requirements. If risk retention is determined to, as a general rule, apply to CLOs, we request that the Agencies create a "safe harbor" which would set forth the circumstances in which risk retention would not be necessary in the context of a CLO. We believe that a safe harbor is necessary because of the limited utility of the qualifying commercial loan exemption currently included in the Proposed Rules. As reported already to the Agencies in several early response submissions, virtually no commercial loans available in the market today are underwritten in accordance with the proposed criterion, which means it is not a workable exemption.

We would welcome the opportunity to provide further commentary and participate in any discussion relating to the creation of a CLO safe harbor.

[9] Press Release, LSTA's Bram Smith Testifies Risk Retention Proposals Don't Fit CLO Structures: Rules Threaten Vital Credit Source and US Jobs, (April 14, 2011), available at http://www.lsta.org/hubsub.aspx?id=556.

B. RESECURITIZATION TRANSACTIONS

Like CLOs, since resecuritizations also involve assets acquired in the secondary market, applying risk retention requirements to them will have no impact on the origination or underwriting of the underlying assets. We believe the Agencies should exempt resecuritizations as defined herein from the Proposed Rules or, at a minimum, revise the proposed resecuritization exemption to address the actual practice and structure of a resecuritization to permit both the inclusion of legacy assets and to permit tranching.

Resecuritizations typically utilize simple structures and involve only one or a few ABS which are tranched into one or more senior and subordinated classes and sold to investors. The underlying assets of a resecuritization are generally originated long before the resecuritization transaction is even contemplated. Investors in a resecuritization transaction are provided with the CUSIP numbers of the underlying bonds, the offering materials for those bonds, and recent trustee reports describing the performance history for those bonds, as well as an offering memorandum describing, among other things, the revised tranching structure in detail.

Resecuritization transactions are not CDOs. While resecuritizations may bear some superficial similarities to CDOs of ABS, particularly as regards the underlying asset class, in fact resecuritization transactions are very distinguishable from CDOs. As stated above, the bonds underlying a resecuritization transaction are normally seasoned over a period of years before being acquired and deposited into a trust for resecuritization. Additionally, resecuritization transactions are backed by a small static pool of bonds at closing as opposed to being supported by a large, typically between 100 and 150, revolving pool of ABS that are selected and generally managed by a manager during a multi-year reinvestment period. CDOs are actively managed to protect principal or enhance return to the equity investors in the CDO securitization, whereas resecuritizations are static transactions that simply enable trading between sophisticated institutional investors, or are initiated as de-risking transactions by current holders. Additionally, because CDOs contain such a large number of underlying bonds and are often actively managed, the investors do not typically receive the same detailed disclosures as in resecuritization transactions.

Resecuritization transactions perform a vital role in the current post-crisis market. These transactions allow various types of financial and other institutions to manage their capital position and risk exposure to poorly performing legacy securities by re-tranching these securities into one or more classes, each of which provides support to and is subordinate to each higher class of securities. The result is that a poorly performing security can be transformed into a smaller yet higher credit quality security which does not negatively impact the sponsor's balance sheet. The newly created subordinate class or classes of securities may be retained or purchased by sophisticated third party institutional investors who have the tools to adequately price this risk and the ability to take a secondary market position on a particular underlying transaction in return for receiving higher interest rates. In fact, very often, resecuritizations are initiated on a reverse inquiry basis where investors approach dealers to structure and tranche a particular security either in an effort to liquidate some portion of their portfolio (by tranching and retaining the subordinate bonds therefore increasing the liquidity of the senior credit risk of that bond) or to manage their balance sheet risk (by tranching the bond and retaining the senior piece and thereby improving the quality of the investor's holdings).

Section __.21(a)(5) of the Proposed Rules as drafted requires both that (1) the underlying assets are structured in conformity with the risk retention requirements of the Proposed Rules or an exemption therefrom, and (2) the structure does not tranche the underlying assets but rather is limited to the issuance of a single class of pass-through securities. Both aspects of this exemption are too narrow and will eliminate a very important risk management tool. The first prong of the exemption does not grandfather existing ABS originated prior to the risk retention requirements. However, even if the Agencies modified the proposed rules to so grandfather existing securities, the inability to tranche these securities would make the exemption of very limited value. The downgraded or otherwise credit compromised securities that are the typical subject of resecuritizations are not liquid in their current form. The ability of financial institutions and other investors holding such securities to manage risk through tranching and through this process, trading, of these securities is crucial to the ongoing balance sheet health of these institutions, both now and in the future.

We believe that requiring risk retention in the context of a resecuritization transaction does not further the goals of Section 941 and these types of transactions are inappropriately being swept into the rule via the broad definition of ABS. Accordingly, we believe the Agencies should exempt resecuritizations as defined herein from the Proposed Rule or, at a minimum, revise the proposed resecuritization exemption in Section __.21(a)(5) to address the actual practice and structure of resecuritizations to permit both the inclusion of legacy assets and tranching.

We appreciate the Agencies' concerns that with the continued addition of more bonds, a resecuritization structure could become more complex and begin to resemble a CDO of ABS. Our recommendation to address this concern would be to more narrowly limit what qualifies as a resecuritization. Specifically, the agencies could limit exempt resecuritization transactions to transactions containing a specific number of underlying bonds (provided that, if a resecuritization were structured as a "principal protected" transaction the number of underlying bonds should have greater flexibility)[10] and requiring that all underlying bonds must be acquired at closing of a transaction.

C. REPACKAGING OF CORPORATE BONDS

Corporate debt repackaging transactions ("Corporate Repacks") are secondary market repackaging transactions that have no impact on the quality of origination of the underlying corporate bonds since the bonds have already been issued. Analogizing the corporate bond origination process to, for example, the mortgage loan origination process produces a strange result as there is no originating lender or aggregator in this context. Therefore, the only other party that one could reasonably conclude should retain an interest in a Corporate Repack for purposes of furthering the policies of the Proposed Rules would be the financial institution that deposits the corporate bond into the repackaging trust. However, for all the reasons stated herein, requiring a sponsor to retain risk on a secondary market repackaging transaction of a corporate bond does nothing to further the policy goals of Section 941 and we believe will disrupt this market. Therefore, we feel strongly that Corporate Repacks should be exempt from the risk retention requirements of the Proposed Rules.

[10] A principal protected transaction occurs where a securitization vehicle is collateralized both with lower quality ABS and a U.S. government agency security such as a zero coupon bond in the same principal amount and maturity date as the lower quality bonds, making the principal of the zero coupon bond available to pay the principal of the lower quality bond and therefore riskless as to principal for the investors.

The corporate bond market is a more traditional borrower-lender type market and does not follow the originate-to-distribute model of certain ABS asset classes. In a typical Corporate Repack the sponsor of the transaction purchases the underlying corporate bond in the secondary market and deposits it into a newly created trust which issues pass-through certificates secured by the corporate bond without the use of credit tranching. The sponsor of the Corporate Repack is not in contractual privity with, nor would it typically have an affiliation with, the issuer of the underlying corporate bonds. These underlying corporate bonds generally trade in a liquid market, and the underlying corporate issuers, given the current disclosure regime, are effectively always companies which are required to file reports with the SEC under the 1933 Act and the 1934 Act.

The Corporate Repack issuer may also enter into an interest rate or currency swap in order to adjust the cash flows available to pay the investors in the Corporate Repack (e.g.,, to convert fixed rates payable on the underling bond to variable rates or vice versa, or to convert one currency payable on the underlying bond to another currency). In certain structures the Corporate Repack issuer may also sell a call warrant to a third party institutional investor that is not affiliated with the sponsor. The institutional buyer of the call warrant would normally pay a premium in return for the right to purchase the underlying bond at a price agreed up front after some amount of time—normally one to five years. Aside from the addition of an interest rate swap, currency swap, and/or call warrant, the primary purposes of which are to alter payment streams, increase yield or potentially shorten maturities, and not to provide credit support, Corporate Repack securities in effect simply pass-through the economics and risk inherent in the underlying corporate bond to the certificate holders without credit tranching.

Corporate Repacks account for a de minimis percentage of the total corporate bond market. The underlying corporate bond will have been issued prior to and without any contemplation of a potential repackaging transaction and the underlying corporate issuer typically has no involvement in the repackaging transaction. The fact that the Corporate Repack market is so small as compared to the corporate bond market, and the fact that Corporate Repack sponsors have no privity with the issuers of the corporate debt that they repackage, means that the Proposed Rules would likely have no effect on credit quality or underwriting standards in the corporate bond market or on aligning the incentives of originators and securitizers of the bonds. No policy objectives would be served. Alternatively, if adopted the Proposed Rules may have the unintended consequence of eliminating the Corporate Repack market and with it a valuable alternative product for investors in the traditional corporate debt markets.

We understand that at first glance Corporate Repacks might appear somewhat similar to CDOs and therefore raise concerns about providing an exemption for them from the applicability of the Proposed Rules. However, Corporate Repacks are completely distinguishable from CDOs. Perhaps most notably, Corporate Repacks are not collateralized by ABS. Additionally, unlike CDOs, cash flows in a Corporate Repack are not tranched to reallocate credit risk among classes of securities. Similar to resecuritizations, the assets underlying a Corporate Repack are fixed at closing—usually just one bond is involved—and are not actively managed, as is the case with most CDOs. In addition to an offering document describing the Corporate Repack, investors generally have access to publicly filed information by the underlying corporate bond issuer. This disclosure, as noted above, is not generally provided or available to investors in CDOs. Furthermore, unlike many CDOs, Corporate Repacks are generally liquid instruments and many are listed on the New York Stock Exchange or similar exchanges.

We do not believe that imposing the risk retention requirements of the Proposed Rule to Corporate Repacks furthers the policy goals of Section 941 and recommend that they be exempt from the requirements of the Proposed Rules. In the alternative, if the Agencies believe that Corporate Repacks should be covered by Section 941, we would suggest that the resecuritization exemption in Section __.21(a)(5) be expanded to include an exemption for transactions of the type described above.

D. TENDER OPTION BONDS

Similar to Corporate Repacks, TOBs are essentially repackaging transactions of bonds acquired in the secondary market. TOBs repackage tax-exempt bonds issued by state and local municipalities and other forms of governmental and semi-governmental entities (each a "municipal bond"). Requiring a sponsor to retain risk in connection with a TOB transaction does nothing to further the policy goals of Section 941. For the reasons stated below, we feel strongly that TOBs should be exempt from the risk retention requirements of the Proposed Rules.

TOB programs are initiated by a sponsoring bank or other large financial institution depositing a high quality, long term municipal bond into a trust which then issues two classes of securities secured by that underlying bond: floating rate trust certificates and a residual interest. The issued securities are not tranched. The floating rate certificates are typically acquired by mutual funds and structured to meet the requirements of an "eligible security" under SEC Rule 2a-7 under the Investment Company Act of 1940, which includes that the underlying municipal bond be rated at least AA-. The residual interest, which is traditionally equal to less than 1% of the underlying trust assets and correspondingly of the issued trust securities, is either retained by the Sponsor or sold to a sophisticated third-party institutional investor capable of making the investment decision and bearing the risk of loss of that security. The TOB securities are issued under program documentation that includes full disclosure of the underlying municipal bond(s) and any related credit enhancement, the liquidity facility, and other material details of the TOB structure.

Generally on a weekly basis, floating rate certificate holders have the right to put their floating rate certificates back to the trust in exchange for a payment of par plus the certificate's share of accrued interest. If the trust has insufficient monies to pay such amounts, the trust draws on a pre-established liquidity facility (which may be in the form of a bank guaranty, a letter of credit or a swap) to make the required payments. When and if all floating rate certificates are tendered to the trust, or upon the occurrence of an event of default with respect to the underlying municipal bond assets, the municipal bonds are liquidated by the trust, and proceeds are distributed first to floating rate certificate holders and then, following the payment of trust expenses, to the residual interest investor. To the extent of any shortfall in amounts available from the underlying assets to pay what is owed to the floating rate certificate holders, except as described in the next sentence, the floating rate certificate holders will receive payment of that shortfall from the liquidity facility. Floating rate certificate holders can exercise their put right at any time for any reason and receive payment as described above, except in the rare cases of the insolvency or payment-related defaults of the municipal bond issuer, in which case the floating certificate holders receive payment up to full value from the proceeds of sale of the municipal bonds**.** Even in this event, if the underlying municipal bond is insured or otherwise credit enhanced with a letter of credit or similar instrument, which is often the case, absent a simultaneous default by the credit enhancer the floating rate certificate holder will receive payment in full. In the event of a shortfall, the residual interest investor will be paid after the floating rate certificate holders and would not receive payments through a draw on the liquidity facility. Accordingly, the residual interest investor bears the first risk of loss on the TOB.

We strongly believe that TOB programs should be exempted from the risk retention requirements of the Proposed Rules. This view is heavily supported by the facts surrounding the nature and structure of TOB programs. First, requiring risk retention in TOB programs is not necessary to achieve the stated purposes of Section 941. For instance, the legislative history notes that requiring sponsoring entities of securitizations to retain a material amount of risk will “align their economic interest with those of investors in asset-backed securities." The supplemental information to the Proposed Rules further states that: "[b]y requiring that the securitizer retain a portion of the credit risk of the assets being securitized, section 15G provides securitizers an incentive to monitor and ensure the quality of the assets underlying a securitization transaction, and thereby helps align the interests of the securitizer with the interests of investors[,]” and that “when incentives are not properly aligned and there is a lack of discipline in the origination process, securitization can result in harm to investors…and the financial system.”

Just as with the securitization of other asset classes discussed above, TOBs are repackagings of assets acquired in the secondary market. The quality of origination and features of the underlying municipal bonds will not in any way be affected by the inclusion of TOB programs in the risk retention requirements of the Proposed Rules. Further, incentives in TOB programs as currently structured are already appropriately aligned and support a well-functioning market. The structure of a TOB program already provides for a first loss piece to be retained by the sponsor or other sophisticated investor capable of making an informed risk assessment and investment decision based on full disclosure regarding the underlying municipal bond. The holder of the floating rate certificate takes only minimal credit risk occurring in connection with the bankruptcy and certain defined default risk of the underlying municipal bond issuer, and takes no market risk as potential losses on the sale of a floating rate certificate associated with credit deterioration or market fluctuation of the underlying municipal bond or certificate itself may be recovered from the liquidity provider by putting the floating rate certificate back to the trust at par. The liquidity provider, also a sophisticated party executing its facility based on full disclosure and diligence on the underlying municipal bond, is entitled to reimbursement from the residual interest holder, usually on a full recourse basis.

Second, Section 941 provides or permits an exemption in circumstances where the assets collateralizing an ABS meet underwriting and other standards that should ensure the assets pose low credit risk. As previously described, TOB programs are repackages of high quality municipal bonds that, at all times during the life of an individual trust, must retain no less than a AA- or equivalent rating. Additionally, as TOBs are not tranched as in other securitizations, the ratings for TOB programs themselves are derived from the ratings of the underlying municipal bond (and, often, from the credit enhancement that also forms part of the corpus of the trust) and not from the structural elements of the TOB itself. TOB interests are currently structured as very high quality assets and including them in the risk retention requirements will not serve to structurally improve the transactions but rather only to penalize the associated sponsors.

TOBs are not analogous to tranched securitizations designed to transfer risk on a portfolio of underlying assets or securities, for instance such as CDOs of ABS, but rather are analogous to partial ownership of the underlying municipal bonds themselves. The bonds’ typical payment source is a single asset or credit (e.g. specified tax revenues) not pooled revenues from a portfolio of municipal assets. Residual interest investors take the same risks as if they held the underlying municipal bond itself. Floating rate certificate holders take even less risk than investors who hold municipal bonds outright, as floating rate holders have the benefit of not only the municipal bond itself, but also of the liquidity facility to protect against credit deterioration and market risk.

The municipal bond repackaging market, of which TOBs form a part, is not the group of transactions that prompted Congress to enact Section 941. Indeed, TOBs are not viewed by the marketplace as being "asset-backed securities" at all. Moreover, TOBs are important to the liquidity of the municipal bond market because they provide a vast secondary trading market for municipal, state and other tax-exempt issuers. Correspondingly, TOB floating rate certificates are one of the largest asset classes for tax-exempt money market investors. TOB programs are not initiated to achieve improved costs of funding for the continued origination of municipal bonds; rather, TOBs exist to permit the money market mutual fund investor class access to the tax-exempt markets which would otherwise be unavailable to them due to the long-term, illiquid nature of most tax-exempt bonds.

As proposed, Section __.21(a) (3) would exempt asset-backed securities issued or guaranteed by any state or municipality. This exemption, however, is too narrowly drafted and does not include TOBs, notwithstanding the fact that the credit risk and structure of a TOB is essentially the same as that of the underlying municipal bond. The proposed provision takes us to the incongruent result that a TOB repackaging of bonds by a municipal issuer would not be subject to the risk retention requirements of the Proposed Rulse, even if that municipal issuer issued the bonds in question, while a third-party TOB sponsor would be subject to the risk retention requirements in connection with a secondary market repackaging of the exact same bonds. Given the Agencies' concern with protecting investor classes while still creating access to investment product markets, we request that the Agencies reconsider the boundaries of the foregoing exemption to extend its application to TOB programs.

E. ASSET BACKED COMMERCIAL PAPER

A multi-seller ABCP program is composed of a bankruptcy-remote special purpose vehicle (or conduit), sponsored by a financial institution or other entity, that issues commercial paper notes ("CP"). Pools of assets are conveyed from originator-sellers to intermediate special purpose vehicles ("SPVs") established and owned by the originator-sellers and then interests in such pools are conveyed to the ABCP conduit with the approval of the ABCP conduit sponsor. The conveyance to the conduit is funded through the issuance of CP, which may or may not be secured by the underlying pool of assets. The pool of assets from a specific originator-seller may change over the life of the conduit transaction as additional assets are contributed by that originator-seller. Also, the conduit sponsor may underwrite and finance other distinct asset pools generated by unaffiliated originator-sellers.

The source of repayment of the CP is typically from the proceeds of the issuance of new CP which occurs frequently (e.g. every 30, 60 or 90 days) depending on the conduit structure or, if CP is unsuccessfully offered, through draws on the liquidity and credit support facilities provided by regulated banking entities. ABCP conduits structured with 100% liquidity support provide full repayment support to CP investors through such support facilities except in the extremely unlikely event of an actual bankruptcy of the conduit (conduits are structured as bankruptcy remote vehicles and investors, service providers and all other parties to the transaction documents enter into agreements not to petition the ABCP conduit into bankruptcy and, to our knowledge, no bank sponsored conduit with 100% liquidity coverage has ever had an event of bankruptcy occur). In such ABCP conduits, sponsors absorb losses and undertake substantial diligence in underwriting customer transactions in determining whether to provide this 100% support. Accordingly, in purchasing CP, investors primarily focus on the creditworthiness of the financial institutions providing liquidity and/or credit support in making their investment decision. In addition, CP investors focus on the circumstances when liquidity and credit support may be utilized, the circumstances which would prevent CP from being issued (in which case the asset performance risk shifts to the liquidity support providers who are required to repay the maturing CP) and the sponsor's past experience and operational capabilities in managing an ABCP conduit. In fact, in many ABCP structures the CP investors have no direct recourse against the underlying assets.

Although the facilities providing credit support are not initially funded positions, the institutions providing liquidity support are typically highly rated and regulated entities subject to capital adequacy requirements. Capital is required to be held against the liquidity and credit support facilities even if unfunded. In fact, the 100% liquidity support arrangements of ABCP conduits performed well through the recent credit crisis, which saw a steep decline of CP issuance. We are not aware of any losses by holders of such fully supported CP.

Multi-seller, client financing ABCP conduits provide a low-cost financing source for U.S. businesses across a broad spectrum of industries. As noted in the statement of Tom Deutsch, Executive Director of the American Securitization Forum in his recent testimony before the House Financial Services Committee Subcommittee on Capital Markets and Government Sponsored Enterprises, "ABCP financing of corporate America and the global economy remains substantial. For example, approximately $68 billion of automobile loans and leases, $26 billion of student loans, $34 billion of credit card charges, $41 billion of loans to commercial borrowers and $64 billion of trade receivables were financed by the U.S. ABCP market as of December 31, 2010. The total outstanding amount of ABCP sold in the U.S. market stood at $378 billion as of December 31, 2010." If ABCP conduits are subjected to the additional risk retention requirements of the Proposed Rules, without an alternative workable exemption or revision to the exemption currently contained in the Proposed Rules, we are of the strong belief that this essential low cost financing source will be unavailable at levels required in a recovering market.

ABCP conduit transactions are not securitizations; the conduits do not issue asset-backed securities; and, in our opinion, ABCP should not be included in the Proposed Rules. Furthermore, Congress did not intend for ABCP to be captured by Section 941. First, as various industry participants have pointed out already[11], an ABCP conduit sponsor does not fall within the Dodd-Frank definitions of "sponsor" or "securitizer" as a conduit sponsor does not initiate or convey assets. Second, including ABCP within the risk retention requirements does not further the congressional objectives of Section 941. The conduit sponsor already performs rigorous underwriting and diligence procedures in connection with providing liquidity and credit support through which they already assume the credit risk of the underlying assets. Accordingly, the underlying purpose of the Proposed Rules regarding risk retention to "help ensure high quality underwriting standards" will not be enhanced by requiring additional risk retention under the Proposed Rules. Third, as stated previously, the CP issued by the conduit is not an asset backed security. Payments on CP depend primarily on the proceeds from the issuance of additional CP

[11] See ASF Comment Letter re: Risk Retention for ABCP dated November 22, 2010 ("ASF Letter") and ASF Statement of Tom Deutsch Executive Director of the American Securitization Forum, Testimony before the House Financial Services Committee Subcommittee on Capital Markets and Government Sponsored Enterprises, Public Hearing on Understanding the Implications and Consequences of the Proposed Rule on Risk Retention on April 14, 2011 ("ASF Testimony").

or draws on liquidity or credit support providers in the event additional CP cannot be issued. CP investors do not rely on the underlying assets of an ABCP conduit for repayment and are often not secured by a pledge of the underlying assets of the ABCP conduit.

Nonetheless, in the event the Agencies disagree with this analysis and conclude that ABCP should be captured by Section 941, conduit sponsors providing 100% liquidity or credit support should be deemed adequate to satisfy the horizontal risk retention requirement. The credit risk of the underlying assets is borne by the conduit sponsor through the committed liquidity or credit support facilities, which by their terms, are drawn upon to pay the CP in the event the underlying assets render insufficient funds for the conduit to repay maturing CP. The credit retention of the conduit sponsor in the existing structure is already far greater than the 5% credit retention required under the Proposed Rules. This unique structural feature specific to ABCP conduits where the sponsor is retaining 100% of the risk is distinct from securitization products.

Additionally, because of the significant credit risk retained through the existing structure, ABCP conduit sponsors and liquidity and credit enhancement providers are incentivized to undertake, and do undertake, substantial diligence in underwriting customer transactions. Essentially, conduit sponsors' interests are already aligned with CP investors' interests.

In the event, notwithstanding the foregoing analysis of ABCP transaction structures, the Agencies conclude that additional risk retention will be required and that 100% liquidity or credit support is not deemed to be sufficient, in order to mitigate the unintended consequence of limiting available credit to an otherwise well functioning market, we request consideration of the following modifications to the following provisions of the "eligible ABCP conduit" exemption requirements:

First, the requirement in the Proposed Rule to disclose the identity of the originator-sellers of the underlying assets in an ABCP conduit is unnecessary and we would argue is misleading to CP investors by implying that the originator-seller is the source of CP repayment instead of the liquidity and credit support provider. In many conduits, the CP investor is an unsecured creditor of the conduit and as such has no recourse, indirect or direct, to the underlying assets of the ABCP conduit. Further, the confidential nature of ABCP conduits is a fundamental component of these facilities as sellers often prefer not to reveal their funding sources. Conversely, the additional disclosure is of no value to investors. As well, disclosing the identity of originator-sellers may result in a violation of the transaction confidentiality provisions.

Second, the provision requiring the Sponsor to monitor and ensure the originator-seller's compliance with the risk retention rules would be extremely difficult to perform (particularly given the large number of underlying assets that can be included in ABCP conduits) and be of limited value given the Sponsor has no reliable way of ascertaining whether the originator-seller has actually breached the rules. Furthermore, these provisions would not provide any additional protection to the CP investor nor would it enhance the protections intended by the risk retention rules to ensure high quality underwriting standards. We would propose that the monitoring requirements discussed above be eliminated from the eligible ABCP conduit exception.

Third, the requirement that CP be issued solely to fund assets originated by a single originator-seller will significantly and unnecessarily restrict the type of transactions which may be financed. ABCP conduit financing transactions often involve multiple originators. As discussed above, since CP investors are not looking to the assets of the originator-seller, there is no utility for a CP investor to trace the assets to a single originator-seller. Whether there is a single originator or several originators does not impact the risk to the CP investors. Furthermore, in certain instances, the "originator-seller" may finance an ABS in an ABCP conduit which is comprised of assets it did not actually originate, but rather that the seller purchased in the market or perhaps acquired in a business acquisition or combination. The single originator-seller provision of the Proposed Rules would effectively eliminate a significant source of funding in the capital markets. Notwithstanding, if the Agencies do elect to include the requirement as a component of the eligible ABCP conduit exception in the final rule, we ask that the Agencies consider permitting affiliated originator-sellers and the funding of assets acquired by a seller in the capital markets or otherwise.

Further, the proposed ABCP exception does not permit an intermediate SPV to sell interests backed by the same asset backed security to parties other than the ABCP conduit. This requirement does not take into account that in many cases an intermediate SPV often sells interests to multiple parties. For example, many ABCP conduits provide credit card financing by purchasing a security issued by a credit card master trust that issues different series of securities to various investors as well as to ABCP conduits. A rule requiring the ABCP conduit to be the sole source of financing would prohibit other investors from investing in the credit card master trust and would prohibit credit card master trusts (or other types of master trusts financing consumer assets) from obtaining financing through an ABCP conduit. In our view, this provision unnecessarily restricts the availability of credit by either concentrating all credit card master trust financing into a single conduit or excluding credit card master trust financing from the ABCP conduit altogether. Further trade receivable transactions, which often include the added structural protection of a parallel or back-up purchase commitment provided by the bank sponsor or the liquidity banks, would violate this limitation if such protection were utilized. Instead of decreasing risk, this requirement increases risk by forcing the elimination of this structural protection. Another example arises in the context of large transactions which necessarily require multiple funding sources such as ABCP conduits, bank loans or loans from other financial institutions. This requirement would significantly limit a much needed source of financing for these large transactions. Accordingly, we urge the Agencies to eliminate this provision. In the event the Agencies disagree with our view, we request that the eligible ABCP conduit exception permit financing through multiple investors/lenders for master trusts, trade receivable transactions and financing transactions exceeding a threshold level of no less than $300 million.

Finally, we would like to note that without the aforementioned modification to horizontal risk retention requirements to include 100% liquidity or credit support or the modifications to the exception for eligible ABCP conduits as described herein, Sponsors will not be able to comply with many of the provisions of the Proposed Rules with respect to pre-existing deposited ABS as Sponsors do not have the contractual right to unilaterally modify the non-complying transactions and the related documents. Given the short term, revolving nature of the CP and underlying financial assets, a simple grandfathering provision will not address the issue. If the Agencies do not agree with our view that ABCP should not be captured by Section 941, we believe that the necessary correction to avoid the unintended extraction of ABCP conduit financing from the markets, lies in the details of the eligible ABCP exemption requirement as described.

As previously stated, Wells Fargo believes that instilling discipline in the market by improving the quality and transparency of securitizations is an important objective for the Agencies and market participants alike. We also believe that carefully crafted risk retention requirements could be an important tool in achieving this objective and appreciate the efforts of the Agencies in taking on this formidable task. Our goal in this submission is to provide useful commentary in the form of necessary detail and suggestions to aid the Agencies in this project and we appreciate this opportunity.

If you have any questions or would like to discuss our commentary further please do feel free to contact me.

WELLS FARGO & COMPANY

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