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August 2, 2011

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Credit Risk Retention Proposed Rule; File No. S7-14-11, Release No. 34-64148

Dear Ms. Murphy:

The National Association of Bond Lawyers ("NABL") respectfully submits the enclosed response to the proposed rule published April 29, 2011, at 76 FR 24090 (the "Proposing Release") by the Agencies to implement the credit risk retention requirements of Section 941 (b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The comments were prepared by an ad hoc subcommittee of the NABL Securities Law and Disclosure Committee comprised of those individuals listed on Exhibit I and were approved by the NABL Board of Directors.

NABL exists to promote the integrity of the municipal securities market by advancing the understanding of and compliance with the law affecting public finance. A professional association incorporated in 1979, NABL has approximately 3,000 members and is headquartered in Washington, DC.

If you have any questions concerning this submission, please feel free to contact me directly at (202) 682-1495 ([jmcnally@hawkins.com](mailto:jmcnally@hawkins.com)) or Teri M. Guarnaccia at (410) 528-5526 ([guarnacciat@ballardspahr.com](mailto:guarnacciat@ballardspahr.com)).

We thank you in advance for your consideration of these comments.

Sincerely,

John M. McNally

CC: Department of the Treasury  
Office of the Comptroller of the Currency  
250 E Street, SW., Mail Stop 2-3  
Washington, DC 20219  
Docket No. OCC-2011-0002, RIN 1557-AD40

Board of Governors of the Federal  
Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
Attn: Jennifer J. Johnson, Secretary Docket  
No. 2011-1411, RIN 7100-AD-70

Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, NW  
Washington, DC 20552  
Attn.: Alfred M. Pollard, General Counsel  
RIN 2590-AA43

Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429  
Attn.: Comments, Robert E. Feldman,  
Executive Secretary  
RIN 3064-AD74

Department of Housing and Urban Development  
Regulations Division  
Office of General Counsel  
451 7th Street, SW, Room 10276  
Washington, DC 20410-0500  
RIN 2501-AD53



# National Association *of* Bond Lawyers

## COMMENTS OF THE NATIONAL ASSOCIATION OF BOND LAWYERS

### REGARDING

### **JOINTLY PROPOSED RULES ON THE IMPLEMENTATION OF SECTION 941 (b) OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT RELATING TO CREDIT RISK RETENTION**

The following comments are submitted to the Office of the Comptroller of the Currency, Treasury, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, US Department of Housing and Urban Development and the Securities and Exchange Commission (collectively, the “Agencies”) by the National Association of Bond Lawyers (“NABL”) relating to the proposed rule published April 29, 2011, at 76 FR 24090 (the “Proposing Release”) by the Agencies to implement the credit risk retention requirements of Section 941 (b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”), which is codified as new Section 15G of the Securities Exchange Act of 1934 (the “Exchange Act”). The comments were prepared by an ad hoc subcommittee of the NABL Securities Law and Disclosure Committee comprised of those individuals listed on Exhibit I and were approved by the NABL Board of Directors.

NABL appreciates the opportunity to respond to the request for comments by the Agencies.

Generally speaking, questions 162(a) through and including 167 of the Proposing Release seek comment related to the proposed general exemptions provided for under Section 15G(c)(1)(G) and Section 15G(e) of the Exchange Act, which require the Agencies to provide a total or partial exemption from the risk retention requirements for certain types of asset-backed securities or securitization transactions, as may be appropriate in the public interest and for the protection of investors. In addition, the Proposing Release notes that Section 15G(e)(1) permits the Agencies jointly to adopt or issue additional exemptions, exceptions, or adjustments to the risk retention requirements of the rules, including exemptions, exceptions, or adjustments for classes of institutions or assets, if the exemption, exception, or adjustment would: (A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

On November 19, 2010 (as supplemented on December 21, 2010), NABL submitted comments to the Securities and Exchange Commission relating to the proposed implementation of Section 943 of the Act by advocating for a total exemption of municipal securities from the definition of asset-backed securities (the “ABS Comments”). NABL’s comments expressed both textual and Constitutional concerns, as well as factual concerns that the municipal securities markets did not experience the failures or defaults, nor have municipal investors experienced the losses, which prompted the remediation provisions of the Act, including the risk retention requirements. Congress recognized the difference in the municipal markets by mandating that implementing rules include an exemption for municipal securities. This requirement is in addition to the general exemptive authority granted to the Agencies.

Based on the explicit language in the Act relating to the exemption to be granted for municipal securities, as well as the practical safeguards for the public interest and protection of investors which exist in the municipal securities which would be classified as asset-backed securities, NABL believes that the exemptions in the Proposing Release appropriately implement the exemptions in Sections 15G(e)(3)(A) and (B) of the Exchange Act as well as the exemptive authority in Section 15G(c)(1)(G)(ii) and (iii) of the Exchange Act. NABL further believes that the exemptions provided in the Proposing Release are not over-inclusive, but rather fulfill the congressional intent of the Act and acknowledge the existing protections and public purpose of the types of financings which are covered.<sup>1</sup>

We applaud the Agencies’ actions in recognizing the unique nature of the municipal securities market and the appropriateness of providing an exemption from rules that were intended to address abuses in other securities markets.

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<sup>1</sup> It must be noted that NABL, in the ABS Comments, also expressed the practical concern that any attempt to determine that some municipal securities might constitute “asset-backed securities” within the meaning of the Exchange Act, as amended, would need to address the diversity of municipal credit structures. Because the Proposing Release does not substantially address the issues identified in the ABS Comments, and in view of the proposed total exemption of municipal securities and qualified scholarship funding bonds, NABL refrains from further comment thereon at this time. However, were the Commission to determine that some municipal securities were to be treated as asset-backed securities, NABL’s prior scope ABS Comments would be fully applicable to any relevant proposed rules. We would respectfully request the opportunity for public review and comment of any regulatory statements articulating the Agencies views as to this essential threshold issue.

## EXHIBIT I

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