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October 30, 2013

Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219
Docket Number OCC-2013-0010
RIN 1557-AD40

Robert deV. Frierson, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington. DC 20551
Docket Number R-1411
RIN 7100-AD70

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

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
File Number S7-14-11
RIN 3235-AK96

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

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

RE: Credit Risk Retention

Sirs and Madame:

The undersigned sponsors of tender option bond programs ("TOB Programs"), together with the Securities Industry and Financial Markets Association ("SIFMA"), submit this letter in response to the request of the Office of the Comptroller of the Currency, Treasury; the Board of Governors of the

Federal Reserve System; the Federal Deposit Insurance Corporation; the U.S. Securities and Exchange Commission (the "SEC"); the Federal Housing Finance Agency; and the Department of Housing and Urban Development (collectively, the "Agencies") for comments on the re-proposed rules (the "Proposals") to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (15 U.S.C. §78o-11), as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act"). We appreciate the opportunity to comment on the Proposals.

We are banking entities and the trade association for participants in the municipal securities industry.[1] Together we represent the interests of many of the TOB Program sponsors currently in the market. We appreciate the efforts of the Agencies to address the unique features of TOB Programs in the Proposals; however, we believe that the Proposals do not (i) adequately address the full breadth of the TOB market, (ii) specifically reflect the risk reduction and retention mechanisms inherent in the tender option bond structure, or (iii) fully accommodate existing market practice or structural requirements and limitations. We continue to believe that TOB Programs should be exempted from the risk retention requirements that will be imposed on asset backed securities transactions generally under the Proposals. TOB Programs differ in fundamental ways from other securitization transactions, serve a very different purpose than securitization transactions generally, and maintain a vital role in the municipal securities marketplace. At a minimum, however, we request that the Agencies make certain technical changes to the language in proposed section __.10 of the Proposals to better "reflect and incorporate the risk retention mechanisms currently implemented by the market."[2] We believe that in doing so, the Agencies will reduce the potential for unintended adverse effects and improve the Proposals as they relate to TOB Programs. To further assist the Agencies and their staffs, we attach a markup of section __.10 of the Proposals that reflects our suggested changes, as well as an unmarked version of the same, in Appendix A.

Part A of our letter briefly summarizes our views as to why the Agencies should exempt TOB Programs generally from the risk retention requirements. Part B discusses the proposed definitions of "qualified tender option bond entity" and "tender option bond" and explains why the Agencies should expand them to reflect current practice in the TOB Program market, in the event that the Agencies do not provide exemptive relief. Part C addresses the proposed alternative forms of risk retention, proposes some technical changes to ensure that they operate as we believe the Agencies intended, and proposes a limited, conditional exemption in certain circumstances. Part D explains how we suggest the Agencies should modify section __.10 to clarify certain aspects of the Proposals as they relate to TOB Programs.

PART A: EXEMPTIVE RELIEF

1. THE CASE FOR A FULL EXEMPTION

1.1 We appreciate that the Agencies acknowledged and addressed TOB Programs in the Proposals, and we believe that the intention was to address the many issues that we and others raised in comment letters and in discussions; however, we still believe that the fundamental differences between TOB Programs and other securitization transactions are better served by an exemption. We note that the Agencies' discussions in the Proposals acknowledge that tender option bond transactions address the potential moral hazard problems that the Proposals seek to address. Specifically, we note several themes throughout the Proposals that demonstrate that a full exemption for tender option bond transactions is appropriate and consistent with the Agencies' treatment of other asset backed securities programs ("ABS"). The Proposals themselves state with respect to TOB Programs that "[t]he Agencies believe that the risk retention mechanisms *already in place for these securitizations already serve to address the moral hazard problem*...and thus have proposed two options that would reflect current market

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] Proposals at III.B.8.

practice."[3] The Agencies describe these options as "exemptions," although in our opinion they are an alternative means of meeting the 5% credit risk retention requirement.

(a) A TOB Program is not based on the "originate to distribute" underwriting model that the Agencies believe may pose certain moral hazard risks for some securitization transactions.[4] In most instances, assets that are ultimately deposited in a tender option bond trust ("TOB Entity") are underwritten in a process entirely separate from the TOB Program structure and are purchased by the sponsor in a secondary market transaction. In addition, tender option bonds are designed for purchase in large part by money market funds and, to a lesser but perhaps growing extent, other short term bond investors who invest in high quality, liquid assets. As the Agencies noted in the Proposals, this helps ensure that all assets, either directly or through additional credit enhancement, will be high quality.

(b) The TOB Program structure does not create information gaps for investors. The Proposals identify "significant informational asymmetries" between the originator and the ultimate investors in securitization transactions.[5] The SEC states the following about ABS: "in a securitization the underlying pool is comprised of hundreds or thousands of loans, each requiring time to evaluate."[6] TOB Programs, however, do not involve pooling of large numbers of unrelated assets and, further, do provide detailed information on each asset to potential purchasers of tender option bonds. The transparency of assets in TOB Programs mitigates the possibility of information gaps for potential investors. Further, tender option bonds are purchased by institutional investors, who insist on conducting, and in the case of money market funds are required to conduct, their own credit quality analysis of TOB Entity assets. Finally, assets in TOB Programs are not subject to substitution, so the risk to investors will not change over time.

(c) The Agencies note that the risk retention requirements should reflect and incorporate the risk retention mechanisms currently in the market. We agree, and respectfully submit that the current proposed alternatives do not fully reflect those mechanisms and certain other features of TOB Programs that help ensure that sponsors select and maintain TOB Program assets with high credit quality. The risk retention mechanisms currently in place, the fact that TOB Programs do not involve an "originate to distribute" model, and the information transparency built in to the TOB Program structure all provide sufficient justification and support for greater relief for TOB Programs than the Agencies have currently proposed.

(d) In summation, we strongly believe that the TOB market was created, and continues to operate, with substantial alignment of interests among all parties, as is perhaps best evidenced by the fact that other market participants are advocating for similar changes to the Proposals. We believe the tender option bond market as it currently exists should be outside the scope of the Proposals; and therefore we respectfully request that the Agencies reconsider an exemption for TOB Programs.

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[3] Proposals at VIII.C.7.f (emphasis added).

[4] The Securities and Exchange Commission in its Economic Analysis section of the Proposals identifies what it refers to as a "moral hazard problem" with securitizations – the "situation where one party (e.g., the loan originator) may have a tendency to incur risks because another party (e.g., investors) will bear the costs or burdens of these risks." Proposals at VIII.C.2.b.

[5] Proposals at VIII.C.2.b.

[6] Id.

PART B: REVISED DEFINITIONS IF THE AGENCIES DO NOT PROVIDE A FULL EXEMPTION

2. PROPOSED DEFINITION OF QUALIFIED TENDER OPTION BOND ENTITY

2.1 In the absence of a full exemption from the credit risk retention requirements of section 15G, the risk retention options provided for TOB Programs should address the breadth of transactions that currently comprise the market for TOB Programs. As the Agencies stated in their original release proposing the rule on credit risk retention, "[t]he options in the proposed rules are designed to take into account the heterogeneity of securities markets and practices, and to reduce the potential for the proposed rules to negatively affect the availability and costs of credit to consumers and businesses."[7] We therefore request that the Agencies amend certain definitions in the Proposals.

2.2 The Agencies' proposed definition of a "qualified tender option bond entity," which is limited to a single type of tender option bond transaction, reflects some, but not all, of current market practice in TOB Programs. For example, sponsors use the TOB Program structure to finance taxable municipal securities and preferred shares of registered closed-end investment companies that primarily invest in municipal securities. In some TOB Programs, the municipal securities of more than one issuer are financed in a single tender option bond transaction to reduce transaction costs. As such, the Agencies should define a "qualified tender option bond entity" to ensure that TOB Programs will be able to continue seamlessly and, in the Agencies' own words, "incentivize the creation of...municipal bond "repackaging" securitizations"[8] more generally. This is particularly important because the standard risk retention mechanisms generally do not work with TOB Programs as currently structured. A sponsor of a non-"qualified" TOB Program would very likely have to stop engaging in many transactions because it would not be in a position to comply with section 15G at all.[9] This result could be devastating to the TOB markets, which could in turn materially impact the market for municipal securities.

2.3 Although the Agencies describe the additional risk retention options for TOB Programs as "exemptions,"[10] the Proposals do not in fact grant an exemption for TOB Program transactions. As proposed, the two additional risk retention mechanisms for "qualified" TOB Entities each require the same degree of risk retention (namely, 5%) that would be required of "non-qualified" TOB entities, albeit in a different form, in an attempt to incorporate current market practice. Accordingly, the Agencies should adopt a definition of "qualified tender option bond entity" that incorporates and accommodates the existing alternative structures in TOB Programs today so that those TOB Program structures can comply.

(a) The definition should not be limited to TOB Programs with tax exempt municipal securities and servicing assets. To support existing TOB Programs, the definition of qualifying assets should be broadened to cover, in addition to tax exempt municipal securities and servicing assets: taxable municipal securities, preferred stock of registered closed-end investment companies that primarily invest in municipal securities, tender option bonds or TOB residual interests that are already issued and outstanding, and custodial receipts representing beneficial interests in any of the foregoing. Various TOB Programs currently exist to finance each of these assets, in large part to meet market demand from investors (including but not limited to money market funds) who seek variable-rate, short-term, highly rated, high quality, liquid assets. Market participants view these variations as part of the TOB Program universe. Although there are certain differences among the various types of underlying assets, because the TOB Program structure provides support in the form of a liquidity facility

[7] Notice of proposed rulemaking entitled "Credit Risk Retention" (RIN 1557-AD40; 7100-AD 70; 3064-AD74; 3235-AK96; 2590-AA43; 2501-AD53), published April 29, 2011 at III.B.

[8] Proposals at VIII.C.7.f

[9] For example, TOB Programs are utilized to finance medium term preferred shares issued by closed end investment companies.

[10] Proposals at VIII.C.7.f.

and, in many cases, primary or secondary market credit enhancement, their respective credit profiles are ultimately quite similar and address the moral hazard problem discussed in the Proposals in the same way.

(b) The definition should clarify the proposed language regarding the required commitment of a regulated liquidity provider. For tax reasons, credit enhancement providers may not directly guarantee payments in respect of tax exempt tender option bonds (which are equity for tax purposes), without jeopardizing the tax exemption of the income payable to those tender option bonds. As a result, when a TOB Program involves credit enhancement, it is typically structured as a credit enhancement of the underlying assets deposited in the TOB Entity, so as to guarantee the principal and income attributable to the underlying assets (which, in turn, are payable to the tender option bond holders), rather than guaranteeing payments to the tender option bonds directly. Therefore, with respect to the requirement of a "100% guarantee or liquidity coverage," the definition should be revised to clarify that any qualifying guarantee applies to the assets deposited in the TOB Entity rather than to the tender option bonds themselves. Further, with respect to the liquidity requirement, the language should be changed to clarify that a TOB Entity meets this requirement if it has a liquidity facility that covers 100% of the tender option bonds but that may terminate without notice upon the occurrence of a tender option termination event (a "TOTE"). This is consistent with market practice and complies with the specific requirements set forth in Rev. Proc. 2003-84, as proposed to be amended by IRS Notice 2008-80.

(c) The definition should not be limited to single issuer TOB Programs. Although the assets in most TOB Entities consist of a single issue of municipal securities, in limited instances TOB Entity assets consist of the municipal securities from different issues from the same issuer or of more than one issuer. This typically occurs because the particular securities issuance is not on its own of sufficient principal amount to be financed through a separate TOB Entity. In the TOB Program context, however, this pooling does not diminish the transparency of the structure. In such instances it is standard market practice to identify each specific asset (including the specific issuer thereof), with the same level of detail as would be the case if there were only assets of a single issue being deposited. Accordingly, unlike with traditional ABS pools, the holders of tender option bonds know precisely which assets are being deposited in a multiple issuer TOB Entity.

(d) With respect to the requirement that there be a single residual interest, the Agencies should clarify that residual interests in a qualified tender option bond entity may be held by one or more affiliated registered investment companies (i.e., those that share a common investment adviser). Although it is usually the case that a single entity holds the TOB residual interest with respect to any particular underlying asset, in the case of affiliated registered investment companies, it is market practice to allow multiple beneficial owners to hold the TOB residual interest, provided that such affiliated registered investment companies share a common investment adviser. This practice reduces transaction costs to investment company shareholders. We request that the Agencies confirm that this practice remains appropriate under the final rule.

(e) There should be no further requirements. Each of the remaining requirements contained in the proposed definition solely relates to tax exempt TOB Programs. These requirements are already addressed in Rev. Proc. 2003-84, with which tax exempt TOB Programs must comply in order to receive the favorable tax treatment that is the motivation for the tax exempt TOB Program structure. As noted above, tax exempt TOB Programs make up much, but not all, of the TOB Program market, and the market is evolving in ways that are difficult to anticipate. If the Agencies decide not to provide TOB Programs with a full exemption from the credit risk retention requirements, then the options they provide for retaining risk should enable all transactions that currently comprise the TOB Program market to comply. A limiting definition, combined with potentially unworkable requirements for those TOB Programs and transactions that do

not squarely fall within that definition, places sponsors of such TOB Programs in regulatory limbo with no clear path forward, reduces the utility of TOB Programs for residual holders, harms purchasers of tender option bonds by reducing the number of high-quality, short-term, liquid assets available in the marketplace, and may harm municipal issuers by reducing demand for their securities, thereby increasing their financing costs.

3. PROPOSED DEFINITION OF TENDER OPTION BOND

3.1 The Agencies' proposed definition of "tender option bond," like the proposed definition of "qualified tender option bond entity," captures most but not all of the current TOB Program market. As described in Section 2, there are certain variations to the standard tender option bond structure in the current market, mainly to allow residual holders to achieve a particular financing result or to address regulatory requirements for tender option bond purchasers or liquidity providers. These variations do not materially change the transaction for tender option bond investors, as they address the moral hazard problem identified in the Proposals in a similar fashion. As such, the definition of "tender option bond" in the Proposals would provide an artificial limitation for TOB Programs without any apparent benefit, because all transactions issued in TOB Programs will still be subject to a 5% risk retention requirement for municipal bond "repackaging" securitizations.

(a) We agree with the requirement for a tender option at par plus accrued interest, as these features go to the fundamental nature of the interest.

(b) With respect to the 30 day limit on notice of a holder's election to tender, we respectfully note that the current 30 day limit in Investment Company Act rule 2a-7 is currently proposed to be eliminated to simplify the rule and provide more flexibility for issuers within the context of the rule.[11] We believe therefore, that a 30 day limit is not necessary or, to the extent the proposed elimination thereof is finalized, consistent with the treatment of other ABS. We suggest that the Agencies replace the 30 day limit with a 397 day limit, thereby ensuring liquidity without unnecessarily constraining the TOB Program market.

(c) With respect to the requirement that tender option bonds be eligible securities under rule 2a-7, this requirement should be deleted, as it imposes a compliance burden on the sponsor to warrant such eligibility even though the investor is far better suited and, when that investor is a money market fund, required to make such determinations. Furthermore, in light of the proposed amendments to rule 2a-7, including but not limited to the removal of the 30 day requirement on notice of a holder's election to tender and proposed removal of the 25% basket, a market may develop for non-2a-7 funds that nonetheless invest primarily in high quality investments. Accordingly, the costs to TOB Program participants of tying tender option bonds solely to what may be a shrinking market could be substantial. We submit that such a limitation is not appropriate given the structure generally, and is not necessary in the context of complying with a 5% risk retention requirement.

(d) Therefore, as provided in Appendix A, we propose a definition of tender option bond that describes the key elements of those securities without unnecessarily tying the definition to rule 2a-7. Together with our proposed revisions to the definition of a qualified tender option bond entity, we believe that this approach serves the Agencies' purposes without disrupting an already well-established marketplace.

[11] SEC Release No. 33-9408 (MMF Release). In the MMF Release at p. 493, it is noted that "[e]liminating the requirement that a demand feature be exercisable at any time on no more than 30 days' notice would clarify the operation of rule 2a-7 by removing a provision that has become obsolete."

PART C: REVISED RISK RETENTION OPTIONS IF THE AGENCIES DO NOT PROVIDE A FULL EXEMPTION

Sponsors of TOB Programs should have sufficient flexibility in meeting their risk retention obligations to continue to offer existing TOB Programs and create similar transactions in response to market demand without unnecessary impediments. Accordingly, we believe that, in addition to the two alternative risk retention options set forth in the Proposals (clarified as we suggest so that they work as we believe the Agencies intended), TOB Program sponsors should have an additional, limited exemption that would apply only in certain circumstances.

4. FIRST PROPOSED ALTERNATIVE MEANS OF RISK RETENTION (SECTION __.10(C))

4.1 As drafted, it is not clear that this alternative works as we believe the Agencies intended. Due to the structure of tax exempt TOB Programs, which is largely dictated by the relevant tax analysis, it is not clear that upon issuance the residual interest meets the requirements of an "eligible horizontal residual interest" or that, upon the occurrence of a TOTE, the residual interest meets the requirements of an "eligible vertical interest" as the Agencies propose to define those terms. A TOB residual interest does not technically meet the definition of an eligible horizontal residual interest upon issuance because it is not legally subordinate to the tender option bonds. Rather, it is structured as having a claim to cash flows that is based on contractual agreement with the tender option bond class, and the contractual basis in TOB Entities that contain tax exempt securities is a reflection of the status of each holder's being a partner in the trust property for federal income tax purposes.

If a TOTE were to occur,[12] the TOB Entity governing documents would require that assets be either proportionately distributed to the holders in kind or sold and the proceeds distributed to the respective tender option bond and residual interest classes; and, in any case, the holders would be required to exchange their interests for cash or securities.[13] Therefore, the concept of a TOB residual interest that starts as an eligible horizontal residual interest and then becomes or is exchanged for an eligible vertical interest when a TOTE occurs is not reflective of the way in which TOB Program structures are designed to work in the market. We appreciate the Agencies' desire to refer to traditional forms of risk retention wherever possible, but we believe that with respect to tax exempt TOB Programs these references cause confusion and cannot easily be adjusted to fit with the TOB Program model. Accordingly, we propose a minor but very important modification to this alternative.

4.2 The Agencies should revise the text of the rule to make it clear that retaining a 5% residual interest in a TOB Entity is an acceptable form of risk retention. As the Agencies note in the Proposals,[14] the nature of a traditional TOB residual interest, through which the residual interest holder bears all market risk prior to the occurrence of a TOTE and shares any credit losses pro rata with the tender option bond holders after the occurrence of a TOTE, creates risk for the holder that addresses the moral hazard problem and creates a complete alignment of interest between the residual interest holder and the tender option bond holders regarding the value of the underlying assets. The rule should therefore explicitly state that retaining a residual interest in a TOB Entity equal to 5% of the fair value of the assets deposited in the TOB Entity, determined as of the date of deposit, satisfies the risk retention requirement for this alternative, without reference to the terms "eligible horizontal residual interest" or "eligible vertical interest." This approach is substantially similar to the combination of "eligible horizontal" and "eligible vertical" interests that the Agencies have proposed and will achieve the result that we believe the Agencies intended without the uncertainty of whether a

[12] To our knowledge, a TOTE has never occurred.

[13] For a numerical illustration of a TOB Program transaction, including an example of the flows to the various transaction parties both before and after a TOTE occurs, see Appendix B.

[14] Proposals at footnotes 90 and 94 and accompanying text.

traditional residual interest in a tax exempt TOB Entity qualifies for this risk retention mechanism.[15]

5. SECOND PROPOSED ALTERNATIVE MEANS OF RISK RETENTION (SECTION __.10(D))

5.1 We support this proposal substantially as drafted. The rule should clarify, however, that the calculation is determined once, at the time of deposit. Further, the rule should state that the sponsor can aggregate the amount of the TOB residual interest it holds with the securities it holds directly in meeting its risk retention requirement, determined as of the date of deposit. This approach, which is essentially a combination of __.10 (c) as we propose to revise it and __.10(d) as currently drafted, is consistent with the flexible approach the Agencies have adopted throughout the Proposals.[16]

6. PROPOSED LIMITED EXEMPTION FOR TRANSACTIONS INVOLVING "QUALIFIED RESIDUAL INTEREST HOLDERS"

6.1 The Agencies should provide a limited exemption for certain TOB Program transactions.[17]

(a) The Agencies should adopt a definition of a "qualified residual interest holder," which would be limited to the holder of a TOB residual interest when (i) that holder or an affiliate thereof is a regulated liquidity provider as defined in the Proposals[18] and (ii) such entity provides credit support or enhancement or an irrevocable put option for all underlying assets in the TOB entity in an amount sufficient to guarantee the underlying principal and income payable to the tender option bond holders. TOB Program transactions involving a qualified residual interest holder should be exempt from rule 15G.

(b) When a residual interest holder provides credit enhancement or an irrevocable put option on 100 percent of the assets in the tender option bond entity, that residual interest holder retains all of the market risk by virtue of holding the entire residual interest, and all of the credit risk by virtue of its obligation to pay in the event of the default on the underlying assets. The credit enhancer, unlike a liquidity provider where the underlying assets are not so credit enhanced, is still obligated to pay in the event of an issuer bankruptcy, payment default or rating(s) downgrade below investment grade.

(c) This exemption would only be available when the residual interest holder or an affiliate qualifies as a regulated liquidity provider, whether or not the residual interest holder is actually also providing the liquidity facility with respect to the TOB Program transaction. This requirement would ensure that the retained risk, while not funded, is adequately accounted for and, given the new Basel III regulatory regime related to maximum leverage ratios, subject to minimum required capitalization levels. By limiting this

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[15] As a technical matter, the certification required of a holder of an "eligible horizontal residual interest" (that is, that the projected cash flows are such that such holder is not expected to receive distributions at a rate faster than other classes) is unworkable in the TOB Program context. We believe the Agencies have acknowledged this implicitly in the definition of residual interest. In the typical TOB structure, the underlying assets are not expected to amortize during the life of the transaction and, even when there is principal amortization, the principal proceeds are distributed proportionately to the holders of the residual interest and the tender option bonds, resulting in a pro rata redemption of their respective classes. Although typically the holders of the residual interest and the tender option bonds receive distributions of income at a different rate, the "excess" interest distributable to the residual interest is not applied to reduce the principal balance of such residual interest and therefore the size of the residual interest required to be retained would not be diminished.

[16] See, e.g., Section __.10(b) and Section __.4(b)(1) of the Proposals.

[17] Section 941 of the Dodd Frank Act provides that the Agencies may exempt an ABS transaction to the extent it (i) helps ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (ii) encourages appropriate risk management practices by the securitizers and originators of assets, improves the access of consumers and businesses to credit on reasonable terms, or otherwise is in the public interest and for the protection of investors. As demonstrated in this Section, we believe that the type of transaction described herein clearly meets these standards and that the Agencies therefore have the statutory authority to provide the proposed exemption.

[18] Section __.6(a) of the Proposals.

alternative to those residual interest holders who, as regulated liquidity providers or affiliates of regulated liquidity providers, must have adequate capital to meet their obligations, the Agencies would protect tender option bond holders without unduly limiting the current TOB Program market.

(d) We are aware that in general the Agencies have rejected unfunded commitments, such as contractual obligations and incentive fees, as eligible forms of risk retention. Further, we appreciate the Agencies' desire for consistency, another common theme in the Proposals. We believe, however that consistent with the Agencies acknowledgment of the TOB Program structure in general, allowing an unfunded commitment to help satisfy the Agencies concerns is warranted with respect to a limited subset of TOB Programs and transactions. The distinction between the risk retained through cash flow diversion or the funding of reserves, for example, and that retained when a residual interest holder bears the entire market and credit risk of the underlying assets through a letter of credit or similar transaction, is one that the Agencies should acknowledge and incorporate into the rulemaking. This is even more the case when a commitment to pay, although contingent, is unconditional and must be accounted for, and capital must be set aside, at the time the commitment is made. Such a commitment immediately constrains the availability of capital to engage in other activities; accordingly, in these circumstances there is an immediate impact to the residual interest holder that does align incentives effectively. When the structure addresses the moral hazard risk and does not create obscurity as to the true nature of the assets underlying the investment, and the residual interest holder or an affiliate has an unconditional, binding commitment bolstered by rigorous regulatory requirements, then a contractual obligation should be an acceptable form of risk retention.[19]

PART D: ADDITIONAL CLARIFICATIONS IF THE AGENCIES DO NOT PROVIDE A FULL EXEMPTION

7. CLARIFICATION OF APPLICATION OF THE RULE FOR THIRD PARTY TOB TRANSACTIONS

7.1 The proposed rule defines "sponsor" as the person who directly or indirectly organizes and initiates a securitization transaction by selling or transferring assets to an issuing entity and requires the sponsor to retain the economic interest and perform the other duties specified in section__.4 of the rule. Frequently, the financial institutions that sponsor TOB Programs are the real economic parties in interest with respect to the TOB transactions completed under the program (having selected the security for deposit, having provided or procured the liquidity and credit enhancement arrangements, if any, in support thereof, and having retained the related residual interests), and at such times these financial institutions are using their TOB Program as a funding source for themselves for their own account.

7.2 However, a large segment of the TOB market also involves the use by third party investors (e.g., registered investment companies and other institutional investors) of the TOB Programs ("Third Party TOBs") that are made available by the sponsors on commercially negotiated terms. Most typically, a TOB Program sponsor will be approached by a third party client that has identified securities that it wants to finance through a TOB Program.[20] The key elements of these Third Party TOBs are that the TOB Program sponsor does not initiate the TOB

[19] Another theme throughout the Proposals is that sponsors should have the flexibility to retain risk in a way that causes the least market disruption. Again, we agree with this sentiment and urge the Agencies to adopt our proposed limited exemption as a means of increasing the ability of TOB Program sponsors to retain risk in the manner that best suits their business.

[20] These third parties may solicit various TOB Program sponsors with whom they have relationships and select the one that provides the best overall execution taking into account the factors relevant to their individual strategies and goals. These customers will direct the deposit of the securities into the TOB Entity and acquire the residual interest issued by the TOB Entity. Very often, the third party client will be required to enter into contractual or other arrangements, such as shortfall recovery swaps and total return swaps, or other agreements, such as contracts for differences, make-whole agreements, and other offsetting positions ("TOB hedges"), that serve to indemnify and hold harmless the TOB Program sponsor for any losses incurred in connection with the TOB, especially those relating to the provision of liquidity and credit enhancement needed to structure the TOB and sell the TOB interests.

transaction, does not select the securities and does not directly or indirectly cause the securities to be transferred to the TOB Entity. The TOB Program sponsor in these Third Party TOBs is essentially a service provider whose business is to build relationships and earn various fees,[21] much the same way as it might offer prime brokerage services in other contexts. In Third Party TOBs it is the third party purchaser of the residual interest that is the real economic party in interest, rather than the putative TOB Program sponsor.[22] The third party purchaser stands behind the TOB transaction executed on its behalf by the TOB Program sponsor it has selected. The tender option bond holders of these Third Party TOBs retain all of the benefits of asset transparency described in Section 1 of this letter.

7.3 We believe, based on discussions in the Proposals, that in these circumstances the Agencies intended that the third party purchaser be the party that should retain the required economic interest and abide by the applicable additional requirements of sections __.4 to __.10. For example, the description of the standard TOB transaction contained in the Proposals recognizes that the securitizer in a TOB Program transaction may be either the TOB Program sponsor or a third party investor, presumably based on which of the two is the real party in interest.[23] Unfortunately, there is no accompanying definitive section or provision in the proposed rule that formalizes this position; accordingly, we request that the Agencies provide clarification, so that participants in the TOB Program market understand and agree on their respective responsibilities. Specifically, we request that section __.10 be amended to add language that would clarify and confirm that the risk retention requirement of the sponsor contained in section __.3 will be met if the TOB transaction is a Third Party TOB and the third party purchaser retains the required interest and abides by the transfer and hedging restrictions contained in section __.12. We have proposed some language in our proposals in Appendix A that we believe accomplishes this clarification.

8. PROPOSED DISCLOSURE REQUIREMENTS

8.1 It is unclear what the Agencies intended by the addition of the phrase "in accordance with the disclosure obligations in section __.4(d)" at the end of section __.10(e). Section __.10(e) modifies some of the elements of section __.4(d), and has additional elements that may or may not have been intended to be part of the disclosure requirements of section __.10(e). In light of the fact that, as discussed above and noted by the Agencies, TOB Programs have many elements that distinguish them from, and render them less complicated and opaque than, other ABS programs, we suggest that instead of incorporating unspecified portions of section __.4(d) into section __.10(e), the Agencies amend section __.10(e) to specify a finite list of required disclosures tailored to actual TOB Program structures. We have proposed an amended section __.10(e) in Appendix A that contains the following elements:

(a) the name and form of the organization of the issuer of the tender option bonds;

(b) a statement as to the type of interest to be retained in satisfaction of the risk retention requirement (i.e., whether the interest is being retained pursuant to section __.10(b),(c) or (d), or a combination thereof);

(c) (1) if the interest is to be retained pursuant to either of sections __.10(b) or __.10(c), or a combination thereof, the fair value of the trust assets and the fair value (expressed as a percentage of the fair value of the trust assets and as a dollar amount) of the interest to be retained pursuant to the chosen method or specified combination, each determined as of closing date; and (2) if the interest is to be retained pursuant to

[21] These fees may include, depending on the particular TOB issuance, structuring, brokerage, placement, remarketing, commitment and similar fees.

[22] To ensure this, the TOB Program sponsor will typically require either the holding by the third party purchaser of a sizable residual interest, well in excess of the 5% required retention amount, substantial enough to absorb the risks relating to the financing of the securities, much in the way a broker collects margin. In lieu of or in combination with this, the TOB Program sponsor may require that the third party purchaser enter into one or more of the types of TOB hedges referred to in footnote 20.

[23] Proposals at III.B.8.

section __.10(d), the face value of the securities to be retained pursuant to such method as of the closing date;

(d) a description of the material terms of the interest to be retained; and

(e) whether the sponsor or a person unaffiliated with the sponsor will hold the interest.

9. PROPOSED HEDGING AND TRANSFER RESTRICTIONS

9.1 Proposed section __.12(b)(2) prohibits a retaining sponsor from entering into agreements, derivatives and other positions, if payments thereon are "materially related to the credit risk of either the retained ABS interests or the securitized assets." The assets deposited into TOB Programs typically represent a small portion of a much larger issue of securities, most often held broadly by the public, either individually or through registered investment companies. In many cases, sponsors will own securities of the same issue or other series of the same issue or other securities issued by the same issuer that may or may not have a claim on the same source of payment or security of the issue deposited into a TOB Entity that it sponsors. To mitigate the risk associated with these holdings as well as up to 95% of the assets of the TOB Entity, the financial institution or third party investor may enter into risk reducing transactions, such as credit default swaps, risk participation agreements and similar transactions, either directly or through affiliates that hedge these exposures. We have added section __.10(g) to clarify the meaning of "materially related to the credit risk" of the TOB trust residual interests and the underlying assets so as to ensure that sponsors are able to continue to effectively manage the risks associated with up to 95% of the TOB Entity assets as well as its holdings that are not a part of TOB Program transactions.

9.2 We respectfully submit that, under certain circumstances, the Agencies should grant a limited exemption to TOB Programs with respect to the proposed hedging restrictions, as we believe those restrictions create an unintended and material adverse impact on a segment of the municipal securities market.

(a) As we discussed above, market participants use TOB Programs in a variety of ways that at their core are for the purpose of financing municipal securities (not for tranching the risk of those securities). In some instances the TOB Program transaction is a means itself to accomplish the financing, but in others the TOB Program transaction may form a part of a larger plan of financing in connection with a client financing transaction. An example of the latter is when a sponsor or an affiliate enters into a securities lending transaction or a total return swap with a client for the purpose of providing financing to that client with respect to certain municipal securities. In a separate transaction, the sponsor finances the purchase of the related municipal securities through its TOB Program. The intent of the sponsor or its affiliate in executing these two transactions is not to reduce or shift its risk with respect to its retained interest in the TOB Entity; rather, its intent is merely to finance a client financing transaction in the most effective way.

(b) The proposed hedging restrictions, however, would limit or eliminate the ability of a sponsor to use TOB Programs to finance certain types of client financing transactions referencing municipal securities, making them more costly and less available for clients. If the sponsor used an alternative means of financing these transactions, however, such as a repurchase agreement, there would be no retention requirement or hedging prohibition under the risk retention rules.[24]

(c) The proposed hedging restrictions as they apply to TOB Programs would impair the ability of sponsors and their affiliates to provide various forms of financing to their clients, thereby reducing the appeal of participating directly or indirectly in the

[24] In this regard, we note that participants first established TOB Programs largely to respond to the inefficiency of financing the purchase of tax exempt securities through taxable repurchase agreements.

municipal securities market. Therefore, the Agencies should exclude from the prohibitions in section __.12 those client financing transactions that are entered into by the sponsor or an affiliate that reference the same municipal securities that the sponsor has deposited or will deposit in a TOB Entity. Lastly, we note that a sponsor would still be required to meet its risk retention obligations related to the TOB Program transaction in this circumstance. Our proposed language with respect to this issue is included as new section __.10(g), at Appendix A.

10. EFFECTIVE DATE

10.1 We request that the Agencies clarify that any risk retention requirements apply prospectively only; that is, these requirements or any others the Agencies establish should not apply to TOB Entities in existence on the effective date of the implementing rules. It is not clear that any TOB Program transactions that are outstanding today would meet the risk retention requirements contained in the Proposals[25] and we would expect that many such transactions would remain outstanding beyond the end of the proposed two year compliance period. Accordingly, sponsors of TOB Programs could be forced to choose between engaging in costly restructuring transactions or unwinding TOB Program transactions at a time or under circumstances that are detrimental to sponsors, liquidity providers, residual interest holders and/or tender option bond holders, as well as issuers of municipal securities. The market disruption[26] from this situation would be substantial and, as explained in detail herein, unnecessary.

[25] This is true for both sponsor-initiated and third party-initiated TOB Program transactions.

[26] The significant costs associated with amending and potentially recapitalizing outstanding TOB Program transactions could cause many residual interest holders to terminate transactions voluntarily. If the response of a significant portion of TOB Program sponsors were to sell the underlying municipal securities, this could put downward pressure on prices in the municipal securities market generally, potentially leading to higher yields to prospective municipal issuers, as secondary municipal prices tend to be proxies for new issue municipal securities prices. Even with a two year compliance period, the potential advantage to those residual interest holders who decided to terminate TOB Program transactions earlier rather than later could exacerbate this problem. Although these outcomes are theoretical, we believe it is reasonable to be concerned about the negative impacts on the municipal market.

CONCLUSION

For the reasons set forth above, we believe that the Agencies should modify the Proposals as reflected in Appendix A. In addition, we cannot overstate the problems that would result if the Agencies adopt Section __.10 in its current form. As stated in previous submissions to and conversations with the Agencies, the current TOB Program market is large, healthy and critical to the broader financial markets by virtue of, among other things, creating demand in both the municipal securities market and the tax exempt money market fund market.[27]

The undersigned TOB Program sponsors, SIFMA and our counsel are more than happy to respond to any questions that you may have. We are also happy to discuss TOB Programs more generally and could be available to meet with any of the Agencies at your convenience. Please feel free to contact us by email or telephone. For your convenience our contact information is attached on Appendix C.

Very truly yours,

ASHURST LLP

By: _____
Margaret Sheehan

By: _____
William Gray

SIGNATURES OF PARTICIPATING TOB PROGRAM SPONSORS AND SIFMA FOLLOW

[27] See Letter from Ashurst on behalf of Citibank, N.A., Deutsche Bank AG, New York Branch, Societe Generale, New York Branch, and Wells Fargo Bank, N.A. and Investment Company Institute dated August 31, 2012 at http://www.sec.gov/comments/s7-14-11/s71411-350.pdf; Memorandum of the Division of Corporate Finance regarding a July 18, 2019 conference call with representatives of Ashurst, Citigroup, Deutsche Bank, Societe Generale and Wells Fargo, date July 20, 2012 at http://www.sec.gov/comments/s7-14-11/s71411-342.pdf; Letter from Ashurst on behalf of Citibank, N.A., Deutsche Bank AG, New York Branch, Societe Generale, New York Branch, and Wells Fargo Bank, N.A. dated August 2, 2011 at http://www.sec.gov/comments/s7-14-11/s71411-226.pdf; Letter from Karrie McMillan of Investment Company Institute dated July 29, 2011 at http://www.sec.gov/comments/s7-14-11/s71411-184.pdf.

CITIBANK, N.A.

By: _____

Peter O'Connor

Title: Managing Director

DEUTSCHE BANK AG, NEW YORK BRANCH

By: _____

Title: Dennis Tupper
Director

By: _____

Title: KATHLEEN YOHE
DIRECTOR

J.P. MORGAN SECURITIES LLC

By: _____

Title: MANAGING DIRECTOR

PAUL N. PALMERI

SOCIÉTÉ GÉNÉRALE, NEW YORK BRANCH

By: _____

Title: General Counsel, Americas

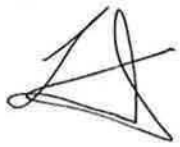
WELLS FARGO BANK, N.A.

By: _____

Title: ARTHUR C. EVANS, M.D.

SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

By:



Title: Managing Director & Associate General Counsel

§ _.10 Qualified tender option bonds.

(a) Definitions. For purposes of this section, the following definitions shall apply:

Municipal security or municipal securities shall have the same meaning as municipal securities in Section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)) and any rules promulgated pursuant to such section.

Qualified residual interest holder means the holder of a qualified tender option bond entity residual interest which:

(1) qualifies or has an affiliate that qualifies as a regulated liquidity provider; and

(2) provides, directly or through such affiliate, 100 percent credit support or enhancement or an irrevocable put option with respect to the par amount of the underlying assets of such entity such that it guarantees the underlying principal and income payable to the holders of all the issuing entity's outstanding tender option bonds.

Qualified tender option bond entity means an issuing entity with respect to tender option bonds for which each of the following applies:

(1) ~~Such~~**The assets of such entity consist solely of or such** entity is collateralized solely by servicing assets **(including credit enhancement, if any, with respect to the securities of such entity)** and municipal securities~~ that have the same municipal issuer and the same underlying obligor or source of payment (determined without regard to any third-party credit enhancement), and such municipal securities~~**, preferred stock of registered closed-end investment companies that invest primarily in municipal securities, tender option bonds or residual interests that are outstanding, or securities representing a beneficial ownership interest in any of the foregoing, and such assets or collateral** are not subject to substitution.

(2) Such entity issues no securities other than:

(i) a single class of tender option bonds with a preferred variable return payable out of capital that meets the requirements of paragraph (b) of this section and

(ii) a single residual equity interest that is entitled to all remaining income of the TOB issuing entity **(which residual interest may be held by more than one registered investment company so long as those registered investment companies share a common investment adviser)**. Both of these types of securities must constitute "asset-backed securities" as defined in Section 3(a)(79) of the Exchange Act (15 U.S.C. 78c(a)(79)).

~~(3) The municipal securities held as assets by such entity are issued in compliance with Section 103 of the Internal Revenue Code of 1986, as amended (the "IRS Code", 26 U.S.C.~~

~~103), such that the interest payments made on those securities are excludable from the gross income of the owners under Section 103 of the IRS Code.~~

~~(4) The holders of all of the securities issued by such entity are eligible to receive interest that is excludable from gross income pursuant to Section 103 of the IRS Code or "exempt-interest dividends" pursuant to Section 852(b)(5) of the IRS Code (26 U.S.C. 852(b)(5)) in the case of regulated investment companies under the Investment Company Act of 1940, as amended.~~

(3) ~~(5)~~ Such entity has a legally binding commitment from a regulated liquidity provider as defined in §___.6(a), to provide ~~a 100 percent guarantee or liquidity coverage~~, with respect to all of ~~the issuing~~**such** entity's outstanding tender option bonds~~.~~

~~(6) Such entity qualities for monthly closing elections pursuant to IRS Revenue Procedure 2003-84, as amended or supplemented from time to time.~~ **, 100 percent liquidity coverage (unconditionally or in all instances other than upon the occurrence of a tender option termination event).**

Tender option bond means a security which:

(1) Has features which entitle the holders to tender such bonds to the TOB issuing entity for purchase at any time upon no more than ~~30~~**397** days' notice, for a purchase price equal to the ~~approximate amortized cost~~**face value** of the security, plus accrued interest, if any, at the time of tender; and

(2) ~~Has all necessary features so such security qualifies for purchase by money market funds under Rule 2a-7 under the Investment Company Act of 1940, as amended.~~**REMOVED**[1]

Third party designee means a third party in a third party TOB that agrees to satisfy the risk retention requirement in a third party TOB.

Third party TOB means a tender option bond transaction that is initiated at the request or for the benefit of a party unaffiliated with the sponsor who selects and directly or indirectly causes the assets to be transferred to the qualified tender option bond entity.

(b) Standard risk retention. Notwithstanding anything in this section, the sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity **(or, with respect to a third party TOB, the third party designee)** may retain an eligible vertical interest

---

[1] We believe the requirement that a tender option bond be an eligible security under rule 2a-7 should be deleted as discussed in Section 3.1(c). As previously stated, because all TOB Program transactions will still be subject to the 5% risk retention requirement, the Agencies' purposes are still served without this limitation, which could disrupt an already well-established marketplace. However, if the Agencies disagree and determine to retain it, then we think this paragraph should be amended as follows:

(2) Has all necessary features so such security, in the reasonable belief of the sponsor, either (i) qualifies for purchase by money market funds under Rule 2a-7 under the Investment Company Act of 1940, as amended, or (ii) is otherwise a variable-rate security that has the characteristics of a high quality, liquid, short-term debt instrument.

or eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of §__.4.

(c) Tender option termination event. The sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity **(or, with respect to a third party TOB, the third party designee)** may retain ~~an~~**a residual** interest that upon issuance ~~meets the requirements of an eligible horizontal residual interest but~~**has a value equal to five percent of the fair value of the securities in the qualified tender option bond entity and** that upon the occurrence of a "tender option termination event" as defined in Section 4.01(5) of IRS Revenue Procedure 2003-84, as amended or supplemented from time to time will ~~meet requirements of an eligible vertical interest~~**provide that the residual interest holder will share in the credit risk of the securities in the qualified tender option bond entity on a pro rata basis with the holders of the tender option bonds issued by the qualified tender option bond entity**.

(d) Retention of ~~a municipal security~~**securities** outside of the qualified tender option bond entity. The sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity **(or, with respect to a third party TOB, the third party designee)** may satisfy ~~their~~**its** risk retention requirements under this Section by holding ~~municipal securities from the same issuance of municipal~~**, with respect to each issue of** securities deposited in the qualified tender option bond entity**, securities from the same issuance**, the face value of which retained ~~municipal~~ securities is equal to 5 percent of the face value of ~~the municipal~~**such issuance of** securities deposited in the qualified tender option bond entity. **Such person may reduce the amount retained under this paragraph by the amounts retained under paragraphs (b) or (c) of this section.**

(e) Limited exemption for transactions involving a qualified residual interest holder. A transaction in which the sole holder of the residual interest in a qualified tender option bond entity is a qualified residual interest holder shall be exempt from the provisions of section 15G.

(f) ~~(e)~~ Disclosures. The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption "Credit Risk Retention**:**" ~~the name and form of organization of the qualified tender option bond entity, and a description of the form, fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and as a dollar amount), and nature of such interest in accordance with the disclosure obligations in §__.4(d).~~

(1) the name and form of organization of the qualified tender option bond entity;

(2) a statement as to the type(s) of interest to be retained in satisfaction of the risk retention requirement;

(3) if the interest is to be retained pursuant to either of sections __.10(b) or __.10(c), or a combination thereof, the fair value of the securities deposited into the qualified tender option bond entity and the fair value (expressed as a percentage of the total value of the securities and as a dollar amount) of the interest to be retained pursuant to the chosen method of risk retention or the specified combination, each determined as of the closing date; and (2) if the interest is to be retained pursuant to section __.10(d), the face value of the securities to be retained pursuant to such method as of the closing date;

(4) a description of the material terms of the interest to be retained in accordance with, as applicable, paragraphs (b), (c) or (d) of this section or the specified combination thereof; and

(5) whether the sponsor or a person unaffiliated with the sponsor will hold the interest

(g) ~~(f)~~ Prohibitions on Hedging and Transfer. ~~The~~**Except as provided below, the** prohibitions on transfer and hedging set forth in § __.12, apply to any ~~municipal~~ securities **required to be** retained by the sponsor **(or, with respect to a third party TOB, the third party designee)** with respect to an issuance of tender option bonds by a qualified tender option bond entity pursuant to paragraph (d) of this section. **This prohibition on hedging shall not apply (1) to the extent that the security or other financial interest purchased or sold or the agreement, derivative or other position entered into, as the case may be, was not purchased, sold or entered into with the purpose and intention of reducing or limiting the credit risk that the sponsor (or, with respect to a third party TOB, the third party designee) is required to retain with respect to the particular securities transferred to the related qualified tender option bond entity, or (2) if the security or other financial interest purchased or sold or the agreement, derivative or other position entered into was purchased, sold or entered into in connection with a transaction entered into by the sponsor or its affiliate with an unaffiliated party (which may take the form of a guarantee, derivative (including without limitation a credit default swap, total return swap or shortfall recovery swap), reimbursement, repurchase, securities lending or other similar risk/benefit transfer transaction), the purpose of which is to provide financing to such party with respect to securities and pursuant to which a qualified tender option bond entity holding the same securities issues tender option bonds in accordance with the terms of section __.10 as part of the overall plan of financing.**

§ _.10 Qualified tender option bonds.

(a) Definitions. For purposes of this section, the following definitions shall apply:

Municipal security or municipal securities shall have the same meaning as municipal securities in Section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)) and any rules promulgated pursuant to such section.

Qualified residual interest holder means the holder of a qualified tender option bond entity residual interest which:

(1) qualifies or has an affiliate that qualifies as a regulated liquidity provider; and

(2) provides, directly or through such affiliate, 100 percent credit support or enhancement or an irrevocable put option with respect to the par amount of the underlying assets of such entity such that it guarantees the underlying principal and income payable to the holders of all the issuing entity's outstanding tender option bonds.

Qualified tender option bond entity means an issuing entity with respect to tender option bonds for which each of the following applies:

(1) The assets of such entity consist solely of or such entity is collateralized solely by servicing assets (including credit enhancement, if any, with respect to the securities of such entity) and municipal securities, preferred stock of registered closed-end investment companies that invest primarily in municipal securities, tender option bonds or residual interests that are outstanding, or securities representing a beneficial ownership interest in any of the foregoing, and such assets or collateral are not subject to substitution.

(2) Such entity issues no securities other than:

(i) a single class of tender option bonds with a preferred variable return payable out of capital that meets the requirements of paragraph (b) of this section and

(ii) a single residual equity interest that is entitled to all remaining income of the TOB issuing entity (which residual interest may be held by more than one registered investment company so long as those registered investment companies share a common investment adviser). Both of these types of securities must constitute "asset-backed securities" as defined in Section 3(a)(79) of the Exchange Act (15 U.S.C. 78c(a)(79)).

(3) Such entity has a legally binding commitment from a regulated liquidity provider as defined in §____.6(a), to provide, with respect to all of such entity's outstanding tender option bonds, 100 percent liquidity coverage (unconditionally or in all instances other than upon the occurrence of a tender option termination event).

Tender option bond means a security which:

(1) Has features which entitle the holders to tender such bonds to the TOB issuing entity for purchase at any time upon no more than 397 days' notice, for a purchase price equal to the face value of the security, plus accrued interest, if any, at the time of tender; and

(2) REMOVED[1]

Third party designee means a third party in a third party TOB that agrees to satisfy the risk retention requirement in a third party TOB.

Third party TOB means a tender option bond transaction that is initiated at the request or for the benefit of a party unaffiliated with the sponsor who selects and directly or indirectly causes the assets to be transferred to the qualified tender option bond entity.

(b) Standard risk retention. Notwithstanding anything in this section, the sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity (or, with respect to a third party TOB, the third party designee) may retain an eligible vertical interest or eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of §__.4.

(c) Tender option termination event. The sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity (or, with respect to a third party TOB, the third party designee) may retain a residual interest that upon issuance has a value equal to five percent of the fair value of the securities in the qualified tender option bond entity and that upon the occurrence of a "tender option termination event" as defined in Section 4.01(5) of IRS Revenue Procedure 2003-84, as amended or supplemented from time to time will provide that the residual interest holder will share in the credit risk of the securities in the qualified tender option bond entity on a pro rata basis with the holders of the tender option bonds issued by the qualified tender option bond entity.

(d) Retention of securities outside of the qualified tender option bond entity. The sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity (or, with respect to a third party TOB, the third party designee) may satisfy its risk retention requirements under this Section by holding, with respect to each issue of securities deposited in the qualified tender option bond entity, securities from the same issuance, the face value of which retained securities is equal to 5 percent of the face value of such issuance of securities deposited in the qualified tender option bond entity. Such person may reduce the amount retained under this paragraph by the amounts retained under paragraphs (b) or (c) of this section.

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[1] We believe the requirement that a tender option bond be an eligible security under rule 2a-7 should be deleted as discussed in Section 3.1(c). As previously stated, because all TOB Program transactions will still be subject to the 5% risk retention requirement, the Agencies' purposes are still served without this limitation, which could disrupt an already well-established marketplace. However, if the Agencies disagree and determine to retain it, then we think this paragraph should be amended as follows:

(2) Has all necessary features so such security, in the reasonable belief of the sponsor, either (i) qualifies for purchase by money market funds under Rule 2a-7 under the Investment Company Act of 1940, as amended, or (ii) is otherwise a variable-rate security that has the characteristics of a high quality, liquid, short-term debt instrument.

(e) Limited exemption for transactions involving a qualified residual interest holder. A transaction in which the sole holder of the residual interest in a qualified tender option bond entity is a qualified residual interest holder shall be exempt from the provisions of section 15G.

(f) Disclosures. The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption "Credit Risk Retention:"

(1) the name and form of organization of the qualified tender option bond entity;

(2) a statement as to the type(s) of interest to be retained in satisfaction of the risk retention requirement;

(3) if the interest is to be retained pursuant to either of sections __.10(b) or __.10(c), or a combination thereof, the fair value of the securities deposited into the qualified tender option bond entity and the fair value (expressed as a percentage of the total value of the securities and as a dollar amount) of the interest to be retained pursuant to the chosen method of risk retention or the specified combination, each determined as of the closing date; and (2) if the interest is to be retained pursuant to section __.10(d), the face value of the securities to be retained pursuant to such method as of the closing date;

(4) a description of the material terms of the interest to be retained in accordance with, as applicable, paragraphs (b), (c) or (d) of this section or the specified combination thereof; and

(5) whether the sponsor or a person unaffiliated with the sponsor will hold the interest

(g) Prohibitions on Hedging and Transfer. Except as provided below, the prohibitions on transfer and hedging set forth in §__.12, apply to any securities required to be retained by the sponsor (or, with respect to a third party TOB, the third party designee) with respect to an issuance of tender option bonds by a qualified tender option bond entity pursuant to paragraph (d) of this section. This prohibition on hedging shall not apply (1) to the extent that the security or other financial interest purchased or sold or the agreement, derivative or other position entered into, as the case may be, was not purchased, sold or entered into with the purpose and intention of reducing or limiting the credit risk that the sponsor (or, with respect to a third party TOB, the third party designee) is required to retain with respect to the particular securities transferred to the related qualified tender option bond entity, or (2) if the security or other financial interest purchased or sold or the agreement, derivative or other position entered into was purchased, sold or entered into in connection with a transaction entered into by the sponsor or its affiliate with an unaffiliated party (which may take the form of a guarantee, derivative (including without limitation a credit default swap, total return swap or shortfall recovery swap), reimbursement, repurchase, securities lending or other similar risk/benefit transfer transaction), the purpose of which is to provide financing to such party with respect to securities and pursuant to which a qualified tender

option bond entity holding the same securities issues tender option bonds in accordance with the terms of section __.10 as part of the overall plan of financing.

Cash Flows on a Hypothetical TOB Trust Prior to Trust Termination

Residual Interest holders receive all of the residual cash flows from the TOB Trust (interest earned on the underlying assets less the interest paid to the Tender Option Bond holders & Trust fees) and retain the full market risk on the underlying assets.

- Residual Interest holders receive all of the residual income from the TOB Trust, calculated by subtracting the interest paid on the Tender Option Bonds and all trust fees from the coupon on the underlying assets.

Sample Structure: 75% Leverage on $10mm Beverly Hills Wtr Revs, 5.00% of 6/1/2037; Current Market Value of 3.91% / 107.892

Cash Flow	Rate	Reference Amount	Par / Notional	$ Per Annum
Underlying Asset Coupon	5.00%	Underlying Asset Par	$10,000,000	$500,000
(-) Tender Option Bond Rate	0.15%	Tender Option Bond Par	$7,500,000	$11,250
(-) Liquidity Fee	0.40%	Tender Option Bond Par	$7,500,000	$30,000
(-) Remarketing Fee	0.10%	Tender Option Bond Par	$7,500,000	$7,500
(-) Trustee Fee	0.01%	Underlying Asset Par	$10,000,000	$1,000
(=) Residual Interest Income				**$450,250**

- Residual Interests are subject to the entire mark-to-market movement on the underlying assets.

Residual Interest Price Computation on the same 75% Leverage Trust Funding $10mm Beverly Hills Wtr Revs, 5.00% of 6/1/2037; Current Market Value on the bonds of 3.91% / 107.892

Security	Proportion	Par / Notional	Price	Market Value
Tender Option Bonds	75%	$7,500,000	$100.000	$7,500,000
Residual Interests	25%	$2,500,000	$131.568	$3,289,200
TOTAL	100%	$10,000,000	$107.892	$10,789,200

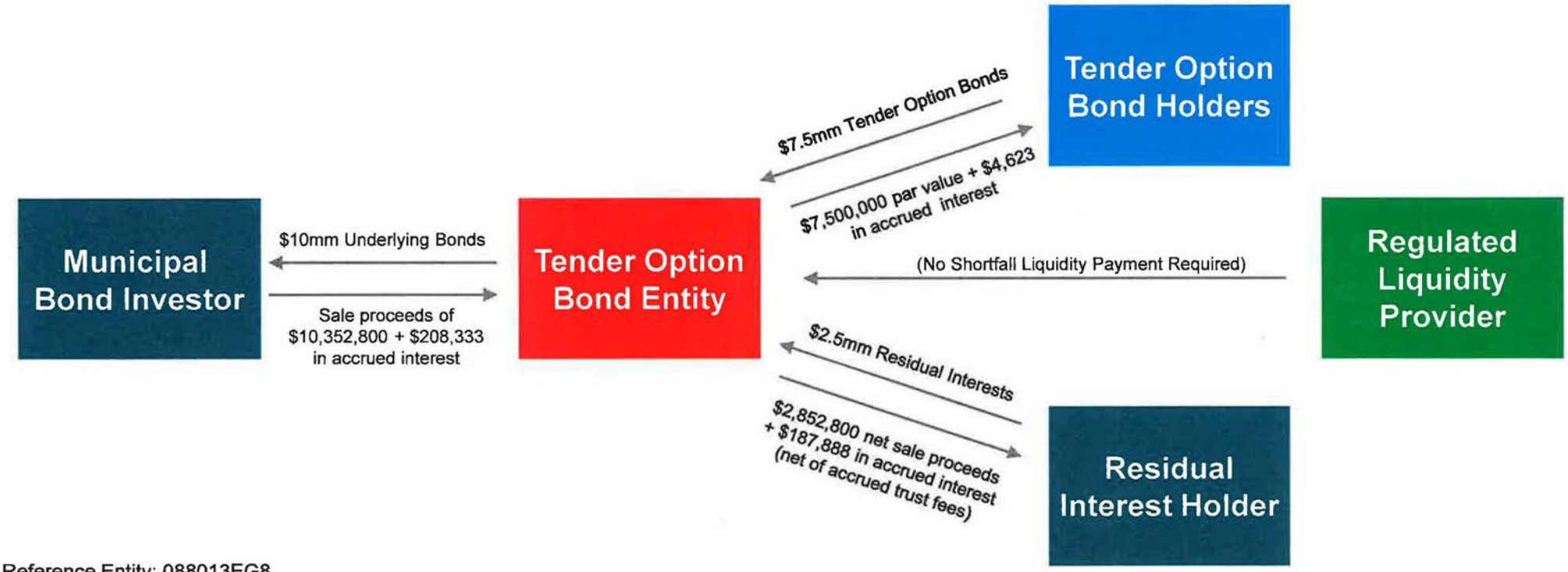
Reference Entity: 088013EG8

Termination of the Hypothetical TOB Trust Pursuant to a Non-TOTE Event

- Upon any TOB Trust termination that is triggered by a non-TOTE event, the TOB Trust is unwound as follows:
  - Underlying assets are sold from the Trust
  - Liquidity Provider is obligated to pay to the Trust any shortfall between the proceeds generated from the sale of the underlying assets and the par value of the Tender Option Bonds + accrued interest thereon (the "Shortfall Liquidity Payment")
  - Accrued Trust fees are distributed to the Trustee, Remarketing Agent and Liquidity Provider
  - Tender Option Bonds are returned to the TOB Trust and the Tender Option Bonds holders receive, in exchange, the par value of their Tender Option Bonds + accrued interest thereon + gain share, if any
  - Residual Interests are returned to the trust and, in exchange, the balance of the proceeds generated form the sale of the underlying assets (after the distribution of accrued trust fees and payments to the Tender Option Bonds holders) is paid to the Residual Interest holders

Example:

- The assets of the hypothetical TOB Trust described on the previous page of this Appendix B are sold out of the Trust at a 4.50% / $103.528
  - All market risk is thus borne by the Residual Interest holder: the value of the Residual Interests has declined from $3,289,200 to $2,852,800 while the value of the Tender Option Bonds has not changed



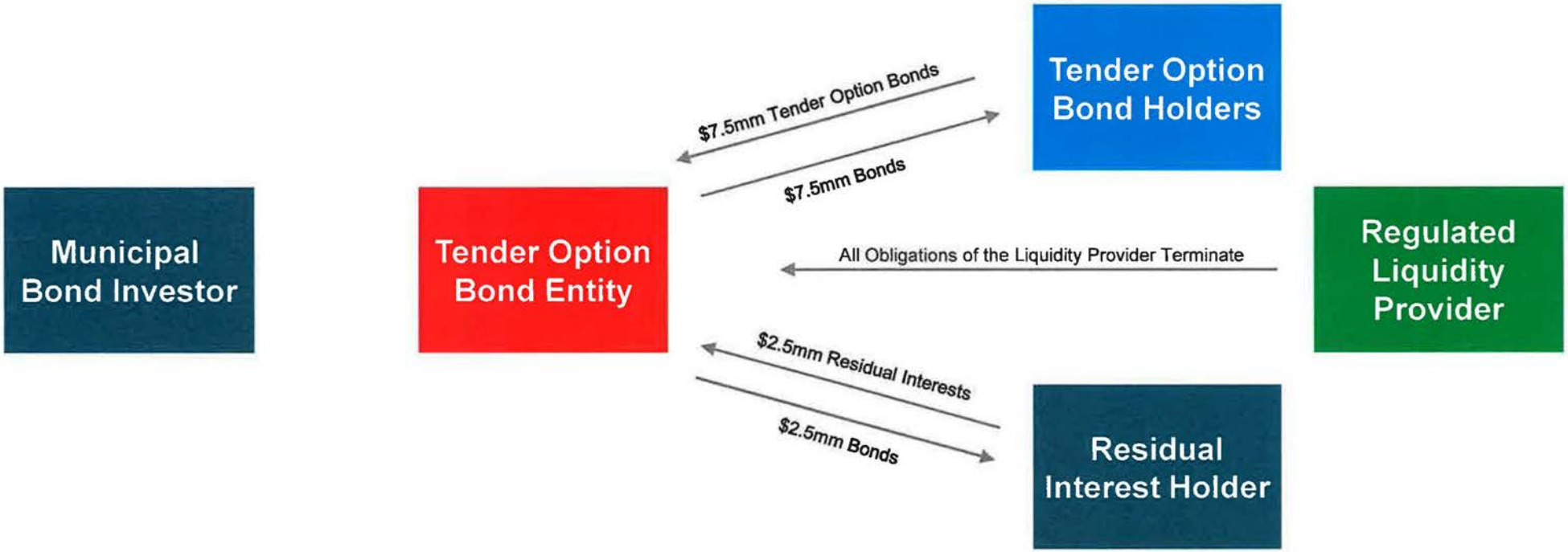
Reference Entity: 088013EG8

Termination of the Hypothetical TOB Trust Upon the Occurrence of a TOTE

- Upon the occurrence of a Tender Option Termination Event (a "TOTE"), all obligations of the Liquidity Provider terminate immediately, the Trust is unwound and the underlying assets or the proceeds from the sale of the underlying assets are distributed to the Tender Option Bond and Residual Interest holders on a pari passu basis

Example:

- A TOTE has occurred on the TOB Trust described on the preceding pages of this Appendix B, causing the trust to unwind and the assets of the Trust to be distributed as follows:
  - Tender Option Bond holders receive 75% of the notional amount of the underlying assets of the Trust
    - Where this percentage is calculated by dividing the Tender Option Bond Par by the Tender Option Bond Par + the Residual Interest Par
  - Residual Interest holders receive 25% of the notional amount of underlying assets of the Trust
    - Where this percentage is calculated by dividing the Residual Interest Par by the Tender Option Bond Par + the Residual Interest Par
- In exchange for their Residual Interests in the TOB Trust, Residual Interest holders receive, and are now subject to the market bid for, $2.5mm notional of the $10mm notional underlying assets
  - Thus, the risk borne by the Residual Interest Holder is equal to 25% of the credit risk of 100% of the total TOB Trust assets



Reference Entity: 088013EG8

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