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By Electronic Submission

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 2-3
Washington, D.C. 20219

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
1700 G Street, N.W.
Washington, D.C. 20552

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Regulations Division
Office of General Counsel
Department of Housing and Urban
Development
451 7th Street, S.W., Room 10276
Washington, D.C. 20410-0500

Re: **Notice of Proposed Rulemaking, Credit Risk Retention**
SEC (File No. S7-14-11); FDIC (RIN 3064-AD74);
OCC (Docket No. OCC-2013-0010); FRB (Docket No. R-1411);
FHFA (RIN 2590-AA43); HUD (RIN 2501-AD53)

Ladies and Gentlemen:

GoldenTree Asset Management, LP ("GoldenTree") respectfully submits these comments in response to the joint Further Notice of Proposed Rulemaking, 78 Fed. Reg. 57928 (Sept. 20, 2013; originally released Aug. 28, 2013) ("FNPRM"), concerning risk retention and the implementation of Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").



I. Overview.

GoldenTree is actively involved in the CLO market as both a manager and an investor in CLO debt securities. GoldenTree is a highly experienced credit investor and manages various funds and accounts that invest in a broad spectrum of assets, including both broadly syndicated leveraged loans and securities issued by CLOs. We are submitting our comments to express our thoughts on how the agencies' proposed regulations would adversely affect CLOs and the commercial loan market, how the structural features of CLOs already provide extensive and adequate incentives that align CLO managers' interests with those of CLO investors, and how, if regulation is deemed necessary, other alternatives would protect investors without causing extensive harm to CLOs, credit markets, and competition.

Specifically, GoldenTree believes that the regulations proposed by the agencies would significantly and adversely affect the formation and continued operation of CLOs, along with the financing they provide to non-investment grade businesses. Open Market CLOs present none of the risks presented by the originate-to-distribute model that Section 941 was designed to address, and a range of incentives ensure that their managers act in a manner that is consistent with investors' interests. CLO performance during the recent financial crisis confirms the effectiveness of these incentives, as does the subsequent resurgence of the CLO market which has demonstrated investors' confidence in the integrity of these investment vehicles. For these reasons, we strongly believe that additional regulation requiring CLO managers to retain more credit risk would produce no benefits and would substantially harm competition and the public. This result would be especially unfortunate because various alternatives are available to the agencies that would far better advance the public interest.

II. Our Experience with CLOs and Commercial Loan Markets.

GoldenTree was established on March 1, 2000 and today is one of the largest independent asset managers focused primarily on non-investment grade corporate credit, managing a variety of commingled and separate accounts. The firm is a partnership that is 100% employee owned and has been since inception. GoldenTree has been registered with the Securities and Exchange Commission as an Investment Advisor since 2001, and in October 2005, GoldenTree's London office became authorized and regulated by the Financial Conduct Authority of the United Kingdom.

GoldenTree launched its flagship fund, the Master Fund, in March 2000 and launched its first CDO in the fall of 2000. Since the firm's inception, GoldenTree has selectively launched new funds that seek to capitalize on specific market opportunities where the firm believes it can deliver attractive returns to its investors. This has included funds targeting the broadly syndicated leveraged loan and CLO debt markets. GoldenTree has grown steadily since its inception and today manages approximately \$18 billion in assets, approximately \$7.7 billion of which is invested in bank loans.

Approximately \$4.2 billion of the bank loans under management are held in seven CLOs currently managed by GoldenTree. Since inception, GoldenTree has managed 12 CLOs for third party investors, five of which have been redeemed after providing double digit returns to the



equity investors in those deals. At the present time, GoldenTree is accumulating assets in a warehouse facility for its next CLO, which is expected to be issued early in 2014. Additionally, GoldenTree has managed 9 CLOs that have issued an aggregate of \$4.5 billion of debt issued by financing subsidiaries for GoldenTree funds that employ leverage as part of their investment strategy, 3 of which are currently active and have nearly \$1 billion of debt outstanding, and 6 which have been redeemed or matured. GoldenTree anticipates sponsoring and managing new CLOs in the future, when the market opportunity exists depending on the yield on the loans and the cost of CLO liabilities. As discussed below, regulatory requirements requiring GoldenTree to purchase and retain five percent of the notional amount of future CLOs will preclude the firm from issuing and managing CLOs once such regulations are effective.

In addition to managing its own CLOs, GoldenTree also invests in the CLO debt securities of CLOs managed by other firms. GoldenTree makes these investments on behalf of funds and/or accounts raised specifically for these types of investments, as well as for certain other funds and/or accounts where such investments are part of the investment strategy. As of September 30, 2013, GoldenTree funds hold approximately \$1.4 billion in such CLO debt securities.

GoldenTree's prominent market role in the non-investment grade arena, together with our broad capital markets experience provides us with a clear understanding of the current CLO market as well as the performance of CLOs during and since the recent financial crisis, and supports our conclusion that the proposed regulations will have a material adverse impact on our own business as well as on the efficient provision of capital to a wide swath of non-investment grade US companies.

III. Comments.

Section 941 of the Dodd-Frank Act requires the Agencies to "jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party." The term securitizer is defined as "an issuer of an asset-backed security; or a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer."¹ Under the FNPRM and earlier proposals, the Agencies interpret an Open Market CLO Manager to be a securitizer, and as such, require it to retain, unhedged, 5% of the unpaid principal balance of the CLO interest.

GoldenTree respectfully disagrees with the Agencies' interpretation of an Open Market CLO Manager as a securitizer of a CLO; and has serious concerns that the proposed risk retention requirement for an Open Market CLO Manager would result in drastically reduced CLO issuance as most Open Market CLO Managers do not have the balance sheet capacity to retain 5% of the CLO interest. Because the existing structure of CLOs fully aligns the interests

¹ Section 941 of the Dodd-Frank Act.



of CLO managers and CLO investors, additional risk retention requirements would not redress any market failure or further align those interests. Additionally, since Open Market CLO managers select assets independently of loan originators (i.e. underwriting banks), and do not operate as part of an “originate-to-distribute” model, the operations of Open Market CLOs present none of the risks to investors that Section 941 was designed to address.

We are also concerned as active CLO investors. CLO securities are an attractive, transparent mechanism for securing yield and exposure to an important credit sector. They permit that exposure while providing a range of protections, modes of investment, and related services to investors. GoldenTree has been an active investor in CLO debt since 2008 and has raised over \$2 billion in dedicated capital to invest in this asset class. We believe that CLO debt in particular offers an attractive risk adjusted return and provides a high margin of safety against defaults due to the structural provisions and to the quality of the underlying loan collateral (typically first lien, senior secured loans with historically high recovery rates in the event of default). The more recent resurgence in investment demand indicates that the investor community has examined CLO performance during an extremely stressful financial period and has concluded that CLOs have offered, and continue to offer, robust protections for investor interests.

CLOs are also vital to supporting the loan syndication process and to providing liquidity necessary to the efficient functioning of many of the most important sectors of the commercial loan market. CLOs play a critical role with respect to the financing non-investment grade companies and to the growth and robustness of the U.S. economy. If the proposed rules were implemented and adversely affected CLOs in the manner we anticipate, then borrower costs would increase, many companies could face difficulties in raising debt capital to fund their operations, the secondary market could become less liquid, and many investors would be denied a valuable and attractive set of investment opportunities. Competition in the provision of loans and investment product would decrease significantly. Those adverse results pose broad risks to the efficient functioning of the loan markets, and the negative effects on borrowers would reduce production efficiency, innovation, employment, and possibly even result in higher consumer prices.

We agree with other commenters who have analyzed the language and purpose of Section 941 and have shown that Congress did not intend to impose risk retention requirements on Open Market CLO managers.² Presumably, Congress did not intend to do so precisely because Open Market CLOs present none of the problems Section 941 was designed to address. Because Open Market CLO managers facilitate the purchase of syndicated loans, they do not directly or indirectly sell or transfer assets to the CLO – and are thus not within the scope of the statutory

² See, e.g., LSTA Letter Comment, Aug. 1, 2011 at 7–14; LSTA Letter Comment, Apr. 1, 2013 at 17–19; LSTA Letter Comment, July 29, 2013 at 9–10; American Bar Association Business Law Section Letter Comment, July 20, 2011 at 93–95; SIFMA Letter Comment, June 10, 2011 at 68–69; American Securitization Forum, June 10, 2011 at 135–136; JP Morgan Chase & Co. Letter Comment, July 14, 2011 at 53–60; The Financial Services Roundtable Letter Comment, Aug. 1, 2011 at 31–32; Morgan Stanley Letter Comment, July 27, 2011 at 21; Bank of America Letter Comment, Aug. 1, 2011 at 23–30; Wells Fargo Letter Comment, July 28, 2011 at 26–29; White & Case Letter Comment, June 20, 2011 at 1–7; Cong. Himes and other Members of Congress Letter Comment, July 29, 2011 at 1–2.



definition of “sponsor” as the agencies incorrectly assert.³

We also agree with commenters that, in light of the high costs and absence of benefits arising from imposing credit risk retention requirements on Open Market CLO managers, the agencies should exercise their statutory powers to exempt those managers from the credit risk retention requirements – assuming that those requirements even apply.⁴

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GoldenTree Asset Management greatly appreciates the agencies’ consideration of its comments and would be pleased to provide additional information or assessments that might assist the agencies’ decision-making. Please feel free to contact Michael Winderman at (212) 847-3421 or at mwinderman@goldentree.com in the event you have questions regarding these observations and conclusions.

Sincerely,

GOLDENTREE ASSET MANAGEMENT, LP

By: 

Name: *Michael Winderman*

Title: *Director - Structured Products*

³ Compare 78 Fed. Reg. 57962.

⁴ See, e.g., LSTA Letter Comment, Aug. 1, 2011 at 17–19; LSTA Letter Comment, Mar. 9, 2012; LSTA Letter Comment, Apr. 1, 2013 at 23; American Bar Association Business Law Section Letter Comment, July 20, 2011 at 93–95; SIFMA Letter Comment, June 10, 2011 at 71–72; American Securitization Forum, June 10, 2011 at 138–139; The Financial Services Roundtable Letter Comment, Aug. 1, 2011 at 33; Bank of America Letter Comment, Aug. 1, 2011 at 30; Wells Fargo Letter Comment, July 28, 2011 at 29; Loan Market Association Letter Comment, Aug. 1, 2011 at 2.