MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

October 30, 2013

Via 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
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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:

Managed Funds Association[1] ("**MFA**") appreciates the opportunity to submit comments in response to the joint Further Notice of Proposed Rulemaking ("**FNPRM**") concerning risk

[1] The Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

retention and the implementation of Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010[2] (the "**Dodd-Frank Act**").[3]

I. Background

MFA members include investment advisers registered with the Securities and Exchange Commission ("**registered investment advisers**") that manage open market collateralized loan obligations[4] ("**Open Market CLO Managers**"), as well as registered investment advisers who invest in CLOs through privately-offered investment funds which they manage ("**CLO Investors**"). As such, MFA is concerned with the Agencies' proposals regarding credit risk retention as applied to Open Market CLO Managers. Open Market CLO Managers, like other registered investment advisers, are investment professionals; they advise Open Market CLOs on the investment in loans originated by commercial banks and are compensated on this basis through management and performance fees. Open Market CLO Managers do not originate loans for distribution.

Section 941 of the Dodd-Frank Act ("**Section 941**") 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."[5] 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.[6] The FNPRM also proposes, as an alternative to requiring the Open Market CLO Manager retain 5% of the CLO interest, requiring the lead arranger to the Open Market CLO to retain 5% of the CLO interest (the "Alternative Proposal").[7]

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[2] Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[3] 78 Fed. Reg. 57928 (Sept. 20, 2013) (hereinafter "FNPRM"). Under section 941 of the Dodd-Frank Act, the authority to prescribe regulations implementing the risk retention requirements (other than for qualified residential mortgages) is granted to the Office of the Comptroller of the Currency ("**OCC**"), the Board of Governors of the Federal Reserve System ("**FRB**"), the Federal Deposit Insurance Corporation ("**FDIC**"), the Federal Deposit Insurance Corporation ("**FDIC**"), and the Securities and Exchange Commission ("**SEC**") (hereinafter, collectively, the "**Agencies**").

[4] The term "**Open Market CLO**" as used in this letter refers to a collateralized loan obligation that directly purchases individual loans either as part of a commercial loan syndication transaction or in a secondary market transaction in the same manner as any other party that purchases loans in the syndicated loan market.

[5] Section 941 of the Dodd-Frank Act.

[6] FNPRM p. 57962. The Agencies believe that an Open Market CLO Manager is a "securitizer" because it selects the loans to be included in the collateral pool and then manages the securitized assets once included in the CLO structure.

[7] *Id.*.

II. Comments

MFA respectfully disagrees with the Agencies interpretation of an Open Market CLO Manager as a securitizer of a CLO. In our view, as further discussed in the Loan Syndications and Trading Association's ("**LSTA**") letter to the Agencies on the FNPRM dated October 30, 2013 (the "**LSTA Letter**"), Section 941 does not apply to an Open Market CLO Manager as such manager does not fall within the definition of "securitizer." An Open Market CLO Manager is a registered investment adviser, provides advisory services to an Open Market CLO, and has fiduciary duties to the fund under the Investment Advisers Act of 1940.[8]

MFA has serious concerns that the proposed risk retention requirement for an Open Market CLO Manager would result in significantly fewer CLO issuances as most Open Market CLO Managers do not have the balance sheet capacity to retain 5% of the CLO interest due to the size of the CLOs. MFA members who manage Open Market CLOs have indicated that if the Agencies adopt rulemaking as proposed under the FNPRM they will unfortunately have to exit the business of managing Open Market CLOs as they do not possess the capital, the infrastructure, or the structural capacity to retain a 5% interest in the CLO.

We are also concerned as CLO Investors, the investment availability of Open Market CLOs will greatly decrease if the Agencies adopt the proposal. Investments in Open Market CLOs, either through a fund or a separately managed account, offer investors including state and corporate pension funds and endowments, diversification in investment exposure.[9] Additionally, CLOs compete with other debt investment products. Investors benefit from this competition through greater investment choice and lower fees. Finally, as discussed in the LSTA Letter, Open Market CLOs play a critical role with respect to the financing of U.S. companies and to the growth and robustness of the U.S. economy.

MFA agrees with the analyses in the LSTA's letter and submits this letter in support of the goals of the LSTA Letter.[10] We appreciate the Agencies' effort to create an Alternative Proposal that does not cause significant disruption and reduction in the formation and market role of CLOs. Unfortunately, as discussed in the LSTA Letter, the proposed requirement for an Open Market CLO Manager to satisfy its risk retention requirement by having the lead arranger for each loan retain 5% of the face amount of the term loan tranche purchased by the CLO would not work in practice as lead arrangers are unlikely to agree to such a restriction.

MFA supports the LSTA Letter's proposed regulatory framework for satisfying the broad objectives of Section 941. The LSTA Letter proposes a framework that would satisfy the risk

[8] 15 U.S.C. § 80b.

[9] We also note that in a few cases an investment fund of an Open Market CLO Manager may own 100% of the Open Market CLO; and if the Open Market CLO Manager were required to retain 5% of the Open Market CLO it would be deemed a lost investment opportunity for the investment fund.

[10] *See* letter from R. Bram Smith, Executive Director, LSTA, to the Agencies, dated October 30, 2013 on the FNPRM.

retention requirement by: (1) allowing an Open Market CLO Manager to retain a reduced face value credit risk, on a *pro rata* basis, to the extent that the commercial loans backing the issued CLO securities qualify under certain criteria (as set forth in the LSTA Letter); and (2) allowing a third party, rather than the Open Market CLO Manager, to retain some or all of the required quantum of credit risk in appropriate circumstances. Such framework would allow a CLO's holding of eligible, high quality loans to reduce the extent of credit risk that a manager would have to retain, and allow one or more of the Open Market CLO Manager or associated parties to discharge the retention obligation. We believe such proposal serves the policy objectives of Section 941 and the Agencies and would impose far fewer costs on borrowers, financial sector participants, investors, and the public at large than the FNPRM's risk retention requirement and Alternative Proposal.

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MFA respectfully urges the Agencies to reconsider its analysis of the applicability of Section 941 to Open Market CLO Managers. We submit that Section 941 does not apply to Open Market CLO Managers because they are not by definition "securitizers," nor do they act in such capacity. To the extent the Agencies determine that Open Market CLO Managers fall within the scope of Section 941, MFA respectfully urges that the Agencies adopt the proposed regulatory framework set forth in the LSTA Letter. We believe such proposal will achieve the Agencies' objectives while significantly reducing the likely disruption to the CLO market, to commercial businesses and to investors. MFA welcomes the opportunity to discuss our letter with the Agencies and/or their staffs. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact the undersigned or Jennifer Han, Associate General Counsel, at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President & Managing Director,
General Counsel