



February 28, 2014

The Honorable Janet L. Yellen  
Chairman, Board of Governors  
Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551

The Honorable Mary Jo White  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

The Honorable Martin J. Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429

The Honorable Thomas J. Curry  
Comptroller of the Currency  
U.S. Department of the Treasury  
250 E Street, SW  
Washington, DC 20219

The Honorable Jacob J. Lew  
Secretary  
United States Department of the Treasury, and  
Chairman, Financial Stability Oversight Council  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

**Re: Single Borrower Single Credit Qualified Commercial Real Estate Eligibility Proposed Rule, Credit Risk Retention OCC Docket No. 2013-0010; Federal Reserve Docket No. R-1411; FDIC RIN 3064-AD74; SEC File No. S7-14-11; FHFA RIN 2590-AA43**

Ladies and Gentlemen:

On October 30, 2013, the Commercial Real Estate Finance Council (“CRE Finance Council” or “CREFC”) submitted its comments on the proposed rule for credit risk retention,<sup>1</sup> which was jointly published by your respective agencies (collectively, the “Agencies”) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>2</sup> As part of those

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<sup>1</sup> Proposed Rule, Credit Risk Retention, 78 Fed. Reg. 57928 (Sept. 20, 2013) (hereafter, “NPR” or “Proposed Rule”).

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”), Pub. L. No. 111-203, §941(b), 124 Stat. 1376, 1896 (2010) (creating Securities Exchange Act § 15G (i)(2)).

comments, we advocated for an exemption for Single Borrower/Single Credit (“SBSC”) transactions,<sup>3</sup> and in our conversations with the Agencies, we agreed to provide: (1) a disclosure regime to ensure these transactions continue to be transparent; (2) a deal size minimum; and (3) underwriting parameters to ensure credit quality. Taken together these elements represent the recommended CRE Finance Council QCRE regime for the SBSC sector. While we already submitted a set of documents outlining the disclosure regime recommended for the SBSC sector on February 6, we are making this additional submission to the Agencies in order to fully articulate in one place the CRE Finance Council recommendations for a tailored SBSC QCRE regime.

The CRE Finance Council is the collective voice of the entire \$3.1 trillion commercial real estate finance market. Its members include all of the significant portfolio, multifamily, and commercial mortgage-backed securities (“CMBS”) lenders; issuers of CMBS; loan and bond investors such as insurance companies, pension funds, specialty finance companies, REITs and money managers; servicers; rating agencies; accounting firms; law firms; and other service providers.<sup>4</sup> Our industry plays a critical role in the financing of office buildings, industrial complexes, multifamily housing, retail facilities, hotels, and other types of commercial real estate that help form the backbone of the United States economy.

### **Role of SBSC Sector**

The SBSC sector plays a specific role in the landscape of commercial real estate (“CRE”) finance, and it appeals to borrowers, lenders and investors for its unique properties:

- The *borrowers* who tend to be highly qualified and often come to market with top-tier and even trophy properties, cite pricing and capacity as their chief considerations influencing their decision to finance in the SBSC sector.
- *Lenders* make loans to institutional borrowers that are large enough to market as single credits in stand-alone transactions, not pooled transactions. These are typically 144A private placements, which offer extensive disclosure and reporting.
- For *investors*, securitization affords them the ability to invest in specific, large transactions in ways not possible on their own balance sheets in the whole loan markets. Moreover, the depth of information provided in both the SBSC pre-sale and the secondary market is attractive, especially when compared to other sectors, such as corporate debt. While investors could find the same transparency in the whole loan market, there is little secondary trading, and a large proportion of investment grade (“IG”) investors have only limited ability to originate and trade larger loans, due to liquidity restrictions and balance sheet concentrations.

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<sup>3</sup> See Letter from CREFC to the Agencies (Oct. 30, 2013), at Part B.1, Page 13 (on file with the Agencies) (“Comment Letter”). Essentially, we define SBSC transactions as those with a single borrower and with one or more loans that are cross collateralized.

<sup>4</sup> A complete CRE Finance Council Membership list is attached to the CREFC Comment Letter at Appendix 12.

In 2013, SBSC issuance represented roughly 20% of CMBS volume and it is expected to play a similarly material role in 2014 issuance. Please see the below metrics for further details about the marketplace.

<b>CMBS 2.0 Single Borrower/Single Credit Deals</b>	
<b>Mortgage Loan Characteristics</b>	
(Based on SBSC deals issued from Jan 2009 - Aug 2013)	
	<b>All Loans</b>
Number of loans.....	66
Aggregate outstanding principal balance (\$mm).....	\$34,857
Range of current loan principal balances (\$mm).....	\$125 to \$2,520
Range of Initial terms to maturity.....	24 months to 180 months
Range of max extension term.....	24 months to 180 months
Weighted average max extension term.....	91
Range of loan rates.....	2.23690% to 7.50000%
Weighted average Loan rate.....	4.2792%
Range of Initial loan-to-value ratios.....	24.6% to 66.7%
Source: JPMorganChase's comment letter of 10/30/13 regarding the Risk Retention Re-proposal	

### **Rationale for Differentiated Treatment of SBSC Transactions**

The CRE Finance Council and a strong majority of its members, including two-thirds of the IG Investors, supported an outright exemption for the SBSC class based on historical performance, transparency and deal structure. In sum, these features suggest sustained credit performance in the future. Additionally, SBSC has exhibited much more consistent performance through-the-cycle, and outstanding performance overall when compared to other asset classes.

**Historical Performance:** SBSC transactions have performed extremely well on both absolute and relative bases. Since 1997, there have been roughly 200 Single Asset/Single Borrower<sup>5</sup> (“SASB”) transactions issued and only one has incurred significant losses.<sup>6</sup> That translates into 0.20% of cumulative losses over the history of the sector, much lower than that in conduits and private-label, residential mortgage-backed securities with QM-eligible loans underlying. The SBSC sector compares well with even that of corporate debt in terms of certain performance metrics, including ratings transitions, as referenced in our comment letter in Appendix 5.

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<sup>5</sup> Single Asset/Single Borrower transactions are almost the same as SBSC deals, with one exception: SBSC deals with more than loans backing them do not have to be cross-collateralized.

<sup>6</sup> The transaction, Extended Stay Hotels, would not be counted as a SBSC deal, as the underlying loans were not cross-collateralized.

Performance		
	Current 60+ DLQ	Cumulative Loss
Sector	Rate	Rate
CMBS (Conduit + SASB)	6.98%	2.67%
Conduit	7.55%	2.88%
Non-agency RMBS QM Subset	23.10%	6.41%
<b>SASB</b>	<b>0.00%</b>	<b>0.20%</b>
Note: Based on 1997 - Aug 2013; a/o 02/26/14 SASB has 0% delinquencies.		
Source: JPMorganChase's comment letter of 10/30/13 regarding the Risk Retention Re-proposal		

**Transparency and Disclosure:** The majority of SBSC transactions underwrite a single borrower and are backed by a single credit, which is typically one loan backed by a large property or a portfolio of properties. In comparison, a conduit deal, its structure and its pricing revolves around the diversification concept. Conduit deals tend to include roughly 75 loans or more with separate borrowers, and the documentation, while robust, concentrates on the top 10 loans by size.

SBSC disclosure practice is rigorous today, even without codification. Borrowers provide extensive details, including rent rolls, net operating income schedules and many other qualitative and quantitative pieces of information once potential investors have signed confidentiality agreements. Given that this is a private 144A market, all investors must be “qualified investment buyers”, or “QIBs”. All potential investors receive the same information and this practice extends to both the primary and secondary markets. As mentioned in our disclosure proposal filed February 6, current industry practice builds off of the CRE Finance Council Investor Reporting Package (“IRP”) that includes core, monthly data reports and ad hoc information packages that are filed on an as-needed basis. As can be seen in the attachments, the IRP is a comprehensive document consisting of historical and current data, specific informational reports, and loan files.

**SBSC Deal Structure:** As noted already, the average loan size is large – many times the size of the conduit loan. This is important for several reasons. Firstly, these loans cannot be pooled easily, Even if they are sliced up, they would still exceed the diversification thresholds for conduits.

This then has several ramifications: (1) Rating agencies require relatively more subordination in SBSC transactions, as they do not receive a diversification benefit; (2) investors are forced to use fundamental credit analysis, as these deals do not lend themselves to statistical analysis; and (3) the lower LTV of these transactions makes the sale of a B-Piece at a discount unnecessary; lowest-rated bonds generally trade closer to par. Since the risk is concentrated in a single credit, the investors perform an extensive amount of due diligence.

We understand that the Agencies look skeptically upon the idea that past performance is an indication of future performance. However, there is strong evidence to suggest that this *is* the case in the SBSC market. When visiting staff at the six Agencies, some of our IG Investors

Forum leaders attended. At this time they spoke about their investment process. While B-Piece buyers are generally willing to consider deals that fall across a wide range, if only at a discount, the IG investors all reported that they tend walk away from deals that do not meet investment criteria. The one deal that incurred losses, was aggressive in its underwriting and only a small proportion of the bonds were placed. The fact that this occurred at the height of the market evidences that the self-correcting mechanism in SBSC is adequate and that historical patterns should prevail in the future.

The CRE Finance Council membership generally believes that risk retention will not drive better performance and that it threatens liquidity, particularly for the SBSC market. As costs rise, the most able borrowers with the best properties will leave the pools, actually instigating adverse selection. Instead, current market dynamics should be preserved as best as possible through tailoring QCRE eligibility requirements to meet SBSC characteristics. This will allow sophisticated buyers to continue to make informed investment decisions and to access high-quality assets.

### **QCRE Eligibility Recommendations for SBSC Transactions**

Working with our members, and in particular, the IG Investors Forum, we developed the proposed changes to the QCRE eligibility parameters for SBSC deals. These recommendations differ slightly from our proposal filed on October 30, 2013 for CMBS conduit loans broadly. Each of the below recommendations is considered to be necessary in order to ensure that quality prevails in this marketplace. Applying additional requirements to the sector, particularly a restriction on amortization and prohibition against interest-only loans (“IOs”), would cause liquidity to contract and adverse selection to occur within the SBSC sector. Our recommendation contains the following elements:

- All loans in the trust must be cross – collateralized, as per the CRE Finance Council recommended definition of SBSC;
- Only applies to transactions that are \$200 million or larger;
- Disclosures must conform to the CRE Finance Council proposal;
- Initial mortgage LTV ratio of 60% for full and partial interest only loans; and
- Initial mortgage LTV ratio of 65% (70% for multifamily) for loans with 30-year amortization.

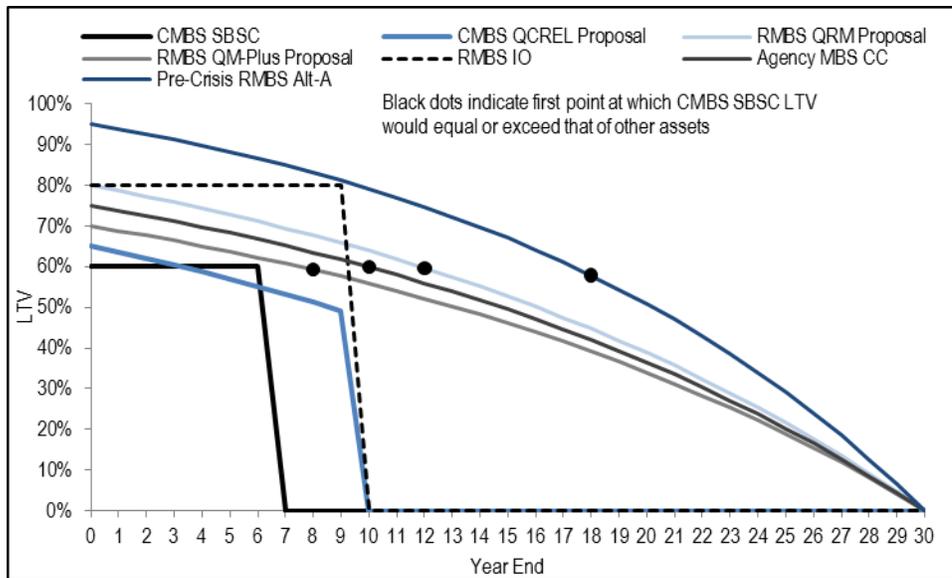
***SBSC Definition:*** The essential point of the SBSC definition enclosed is that, where there are multiple loans, they must be cross – collateralized. Multiple loans in the trust essentially function as if they were one. In this way, SBSC transactions perform more like a corporate bond and less like a conduit, where each loan must perform without support from any of the others.

**Size Threshold:** Due to the high fixed costs of structuring a securitization, below a \$200 million threshold, there is diminishing probability of recouping costs. Some SBSC deals are smaller, but it is rare.

**Disclosure Regime:** The enclosed disclosure regime is rigorous, comprehensive and tailored to the private 144A market. The privacy allows investors, as a general rule, access to extensive information available upon signing a confidentiality agreement. As noted, the CRE Finance Council is essentially supporting the codification of current market practice, whereby potential investors receive the same information. That information is divided along two strata – one that is required and that will be provided in the pre-marketing period and monthly thereafter, and one that is provided on an as-needed basis, such as information regarding new appraisals, and other *ad hoc* events.

**Loan-to-Value:** After considerable deliberation over the course of several submissions related to the risk retention rule, issuers and IG investors agree that the most effective and appropriate underwriting criterion for SBSC transactions is LTV:

- LTV is a readily understandable and available metric and the one that most clearly demonstrates the borrower’s equity in the property;
- The processes around the estimation of “V” (“value”) in LTV is governed by regulation (i.e., FIRREA), and issuers have no influence over the appraisals that inform this measurement;
- At 60% mortgage LTV for full and partial IOs, the CRE Finance Council is setting the threshold more conservatively than the requirement in the re-proposal (65% for non-multifamily and 70% for multifamily); and
- IO loans with LTVs of 60% will have more equity on day 1 than a qualifying residential mortgage loan will have after 10 years of amortization on a 30-year schedule (see chart below and data details in Appendix 1).



Source: JPMorgan Chase

**LTV versus DSCR:** While the re-proposal includes a debt-service-coverage-ratio (“DSCR”) threshold, CRE Finance Council members agreed that there was no need for one and that a DSCR limit would actually initiate negative trends within the SBSC sector:

- LTV has fewer moving parts and is more effective as a credit quality control than DSCR;
- DSCR cannot accommodate floating rate loans, which represented roughly 14% of the SBSC market, as of August 2013, and are rapidly increasing as a proportion of the deals issued; and
- The DSCR concept is generally problematic in a rising rate environment, as both the numerator and the denominator in the equation are interest-rate sensitive. Instead of acting as an underwriting control, applying a DSCR threshold when rates are on the upswing will dampen liquidity, without supporting credit quality.

**Importance of IO Loans:** As a general rule, CRE Finance Council members agree that there are no preordained underwriting criteria guaranteed to ensure credit quality. Instead, each loan is considered unique, with many idiosyncratic variables, which must be factored into fundamental analysis. Said another way, many of our IG investors assert that the structure of a loan is not more important than borrower and property quality. The presence of interest only notwithstanding, SBSC loans are structured conservatively. They typically have significantly lower LTVs than conduit QCRE loans and QRM loans, as shown in the chart above.

These principles are important in considering underwriting criteria for the SBSC sector. Full and partial IOs together represent more than 70% of the outstanding collateral. Given that SBSC transactions perform so well, we respectfully suggest that the regulatory bias against IOs in non-residential mortgage markets is misplaced and overstated. IOs often finance the best borrowers and properties, and it is essential that they be given eligibility for QCRE treatment.

**Conclusion**

The CRE Finance Council appreciates the amount of effort and work the Agencies have put forth in the development of the Proposed Rule, and in preparation of conversations about our Comment Letter. We have always valued the opportunity to work with the Agencies to further explain our ideas and to alleviate any concerns the Agencies may have with those recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen M. Renna". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stephen M. Renna  
President & CEO  
CRE Finance Council

cc: The Honorable Shaun Donovan  
Secretary  
United States Department of Housing and Urban Development  
451 7th Street SW  
Washington, DC 20410-0500

Honorable Melvin L. Watt  
Director  
Federal Housing Finance Agency  
400 7th Street SW  
Washington, DC 20024

APPENDIX 1

Criteria	CMBS SBSC	CMBS QCREL Proposal	RMBS QRM Proposal	RMBS QM-Plus Proposal	Agency MBS CC	Pre-Crisis RMBS Alt-A	RMBS IO
	LTV	60%	65%	80%	70%	75%	95%
Coupon	4.50%	4.50%	4.50%	4.50%	4.50%	6.00%	4.50%
Term Length	7	10	30	30	30	30	10
Amort Term	0	25	30	30	30	30	0
Year	CMBS SBSC	CMBS QCREL Proposal	RMBS QRM Proposal	RMBS QM-Plus Proposal	Agency MBS CC	Pre-Crisis RMBS Alt-A	RMBS IO
0	60%	65%	80%	70%	75%	95%	80%
1	60%	64%	79%	69%	74%	94%	80%
2	60%	62%	77%	68%	72%	93%	80%
3	60%	60%	76%	66%	71%	91%	80%
4	60%	59%	74%	65%	70%	90%	80%
5	60%	57%	73%	64%	68%	88%	80%
6	60%	55%	71%	62%	67%	87%	80%
7	0%	53%	69%	61%	65%	85%	80%
8	0%	51%	68%	59%	63%	83%	80%
9	0%	49%	66%	58%	62%	81%	80%
10	0%	0%	64%	56%	60%	79%	0%
11	0%	0%	62%	54%	58%	77%	0%
12	0%	0%	60%	52%	56%	75%	0%
13	0%	0%	57%	50%	54%	72%	0%
14	0%	0%	55%	48%	52%	70%	0%
15	0%	0%	53%	46%	49%	67%	0%
16	0%	0%	50%	44%	47%	64%	0%
17	0%	0%	48%	42%	45%	61%	0%
18	0%	0%	45%	39%	42%	58%	0%
19	0%	0%	42%	37%	39%	54%	0%
20	0%	0%	39%	34%	36%	51%	0%
21	0%	0%	36%	31%	33%	47%	0%
22	0%	0%	32%	28%	30%	43%	0%
23	0%	0%	29%	25%	27%	39%	0%
24	0%	0%	25%	22%	24%	34%	0%
25	0%	0%	22%	19%	20%	29%	0%
26	0%	0%	18%	15%	17%	24%	0%
27	0%	0%	14%	12%	13%	18%	0%
28	0%	0%	9%	8%	9%	13%	0%
29	0%	0%	5%	4%	4%	7%	0%
30	0%	0%	0%	0%	0%	0%	0%
Source: JPMorgan Chase							

## **CREFC REQUESTED EXEMPTION FOR SINGLE BORROWER DEALS**

CREFC requests that Single Borrower/Single Credit transactions be exempted from the credit risk retention rules (the “Single Borrower/Single Credit Exemption”).

A “Single Borrower/Single Credit” (“SBSC”) transaction would be defined as “A securitization of a single commercial real estate loan or a group of cross-collateralized commercial real estate loans that represent(s) the obligation of one or more related borrowers secured by one or more commercial properties under direct or indirect common ownership or control, and satisfying the following Disclosure Requirements in connection with the related securities offering.”

SBSC transactions are substantially similar to, and compete directly with, the whole loan lending activities of portfolio lenders with the further refinement that SBSC transactions allow capital markets investors to purchase higher risk and correspondingly higher yielding, subordinate interests in such loan(s). Current disclosure requirements for these transactions offer 144A investors robust disclosure measures. If SBSC transactions are to be exempted from risk retention under Dodd-Frank, the disclosure requirements for SBSC transactions ought to mirror the disclosure requirements generally required by portfolio lenders. This will ensure investors continue to be provided with material information to assess the concentrated credit risks within SBSC transactions.

### **DISCLOSURE REQUIREMENTS:**

- I. Offering circular or memorandum (the “Offering Document”) will generally satisfy the disclosure requirements of a public CMBS offering:
  - A. All Regulation AB requirements for CMBS transactions (to the extent applicable) will be satisfied, except for the requirement for Regulation S-X financial statements required under Item 1112 of Regulation AB.
  - B. The Offering Document will disclose historical operating financial information for the property or properties for the preceding 3 years (or such shorter period for which such information is reasonably available), together with underwritten cash flow information for disclosed revenue and expense items.
  - C. Securitization due diligence/disclosure obligations under Rule 193 (implementing Section 945 of Dodd-Frank Act) will be satisfied.
  - D. The Offering Document will provide the following disclosures regarding the loan or loans and the property or properties due to asset/credit concentration:
    - A summary of the material terms of the loan documents, including material terms of cash management arrangements
    - A description of the property or properties

- A description of the borrower, the borrower sponsorship and guarantors, and related ownership structure
  - A summary of any material property management agreement
  - A summary of any material franchise agreement
  - A summary of any material ground lease
  - If there is material mezzanine, other subordinate debt, or preferred equity, a description thereof and a summary of the material terms of any related intercreditor agreement
  - Identification of material risk factors related to the loan or loans and the property or properties
- II. After entering into an industry standard confidentiality agreement, any otherwise qualified investor will be entitled, upon request, to receive the following additional information:
- A. Copies of third party reports:
1. Appraisal
  2. Environmental Report
  3. Engineering/Building Condition Report
- B. Copies of all relevant loan documents (except for portions thereof subject to confidentiality obligations), including but not limited to the following:
1. Loan Agreement
  2. Promissory Note
  3. Cash Management Agreement
  4. Mortgage/Security Agreements
  5. Property Management Agreements
  6. Documents and Agreements governing material mezzanine or other subordinate debt
  7. Other material employed in the underwriting of the loan, including but not limited to property tax bills, independent real estate tax analysis, etc.
- C. Copies of financial statements and rent rolls, to the extent required to be provided by the borrower to the loan seller.
- III. The Offering Document would disclose that the transaction is exempt from risk retention obligations in reliance on the Single Borrower/Single Credit Exemption.
- IV. Ongoing Reporting.

The following regular reporting and ad hoc information would be made available to investors and prospective investors (upon delivery of applicable certifications):

- A. Monthly Distribution Date Statements
- B. Monthly CREFC Investor Reporting Package (IRP) applicable to the transaction, which is required per the CMBS loan documents (See Appendix 1 for detailed reporting and information provided by IRP)
- C. Notices of amendments to the mortgage loan documents, requests for termination of special servicer, and other material items of the type required under Form 10-D
- D. Annual Assessments of Compliance with Servicing Criteria and related Public Accounting Firm Attestation Reports
- E. Periodic financial information furnished by the borrower that is required under the loan agreement
- F. If required to be obtained pursuant to the applicable servicing agreement, updated appraisal reports and environmental assessments

**Appendix 1**  
**CRE Finance Council Investor Reporting Package**

The key items of interest included in the CRE Finance Council Investor Reporting Package (IRP) include the following data and supplemental reports that are filed monthly or on an as-needed basis:

- Master Servicer Files
  - Loan Setup
  - Loan Periodic Update
  - Property Files
  - Financial Files
- Property Income Statements (Borrowers and Property)
- Special Servicer Loan File
- Trustee Data Files
  - Bond Level Summary
  - Collateral Summary
- Supplemental Data Reports to be filled out by Servicers
  - Servicer Watchlist / Portfolio Review Guidelines
  - Delinquent Loan Status Report
  - REO Status Report
  - Comparative Financial Status Report
  - Historical Loan Modification/Forbearance and Corrected Mortgage Loan Report
  - Loan Level Reserve/LOC Report
  - Total Loan Report
  - Advance Recovery Report
- Supplemental information to be supplied by Servicers:
  - Appraisal Reductions
  - Servicer Realized Losses
  - Reconciliation of Funds
  - Historical Liquidation Losses
  - Interest Shortfall Reconciliations
  - Significant Insurance Event Report
  - Loan Modifications
  - Loan Liquidations
  - REO Liquidations
  - 1099 A/C Tax forms for servicers

## SINGLE BORROWER/SINGLE CREDIT EXCEPTION

To be inserted within:

### **§ .14 Definitions applicable to qualifying commercial loans, qualifying commercial real estate loans, and qualifying automobile loans.**

Offering Document means the offering circular or memorandum made available to investors in connection with the offering of CMBS as part of a Single Borrower/Single Credit transaction.

Single Borrower/Single Credit transaction means a securitization of a single commercial real estate loan or a group of cross-collateralized or cross-defaulted commercial real estate loans that represent the obligation of one or more related borrowers secured by one or more commercial properties under direct or indirect common ownership or control, and satisfying the requirements set forth in § \_\_.15(d).

To be inserted within:

### **§ .15 Qualifying commercial loans, commercial real estate loans, and automobile loans**

(d) Exception for Single Borrower/Single Credit transaction. Single Borrower/Single Credit transactions shall be subject to a 0 percent risk retention requirement under subpart B, provided that:

(1) Offering Document Disclosures. The Offering Document shall:

(i) Generally satisfy the applicable disclosure requirements set forth in 17 C.F.R. § 229.1100, *et seq.*, except for the requirements in § 229.1112 insofar as it relates to the borrower or borrowers or the property of properties;

(ii) Contain:

(A) A summary of the material terms of the loan documents for the loan or loans underlying the Single Borrower/Single Credit transaction, including material terms of cash management arrangements;

(B) A description of the related property or properties, including the following information regarding the property or properties underlying the Single Borrower/Single Credit transaction for the preceding three years (or shorter period for which such information is reasonably available to the securitizer):

(1) Historical operating financial information; and

- (2) Underwritten cash flow information for disclosed revenue and expense items;
  - (C) A description of the borrower, the borrower sponsorship and guarantors, and related ownership structure;
  - (D) A summary of any material property management agreement;
  - (E) A summary of any material franchise agreement;
  - (F) A summary of any material ground lease;
  - (G) If there is any material mezzanine debt, subordinated debt or preferred equity related to the property or properties, a description thereof and a summary of the material terms of any related intercreditor agreement; and
  - (H) Identification of material risk factors related to the loan or loans underlying the Single Borrower/Single Credit transaction, the related property or properties, and the related borrower or borrowers.
- (iii) Disclose that the Single Borrower/Single Credit transaction is exempt from risk retention obligations in reliance on the Single Borrower/Single Credit transaction exception in §\_\_.15(d).

(2) Additional Disclosures. In addition to the Offering Document satisfying the requirements set forth in §\_\_.15(d)(1), the following additional information shall be made available in connection with the CMBS offering related to the Single Borrower/Single Credit transaction to prospective investors, upon their request, subject to clause (iii) of this paragraph (2):

- (i) Copies of third party reports related to the property or properties underlying the Single Borrower/Single Credit transaction, including the:
  - (A) Appraisal(s);
  - (B) Environmental report(s); and
  - (C) Engineering/building condition report(s); and
- (ii) Copies of material loan documents (except for the portions thereof subject to confidentiality obligations in favor of the related borrower or borrowers) for the loan or loans underlying the Single

Borrower/Single Credit transaction, including, to the extent applicable, the:

- (A) Loan agreement;
- (B) Promissory note;
- (C) Cash management agreement;
- (D) Mortgage and security agreement;
- (E) Any material property management agreement;
- (F) Agreements governing any mezzanine debt or subordinate debt preferred equity related to the property or properties underlying the Single Borrower/Single Credit transaction, including any related intercreditor agreement; and
- (G) Material documents or information used by the originating lender in its underwriting of the loan, including but not limited to property tax bills and independent real estate tax analysis.

(iii) Notwithstanding the foregoing, the making available of the information set forth in clauses (i) and (ii) of this paragraph (2) may be conditioned on the prospective investor entering into a commercially reasonable confidentiality agreement.

(3) Ongoing Reporting. The agreement setting forth the requirements for ongoing reporting to CMBS investors in connection with the Single Borrower/Single Credit transaction shall require that the following information shall be made available to investors and prospective investors via the certificate administrator's or trustee's website (upon making applicable certifications) on an ongoing basis:

- (i) Monthly distribution date statements prepared by the trustee or certificate administrator;
- (ii) Monthly Commercial Real Estate Finance Council Investor Reporting Packages applicable to the transaction;
- (iii) Notices of amendments to the loan documents for the loan or loans underlying the Single Borrower/Single Credit transaction, requests for termination of the related special servicer, and other material items of the type required under Form 10-D, pursuant 17 C.F.R. § 240.13a-17, for the Single Borrower/Single Credit transaction, except for the

requirements in 17 C.F.R. § 229.1112 insofar as it relates to the borrower or borrowers;

- (iv) Periodic financial information furnished by the borrower or borrowers pursuant to the loan agreement;
- (v) Annual assessments of compliance with servicing criteria and related public accounting firm attestation reports for entities performing a servicing function as contemplated by 17 C.F.R. § 229.1122 and servicer compliance statements as contemplated by 17 C.F.R. § 229.1123; and
- (vi) Any updates to the reports listed in subparagraph (2)(i) of this paragraph, if required to be obtained pursuant to the servicing agreement for the Single Borrower/Single Credit transaction.

**To be inserted within:**

**§ .17 Underwriting standards for qualifying CRE loans.**

- (c) Exception. The provisions of this section shall not apply to Single Borrower/Single Credit transactions.