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July 3, 2014

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  
20<sup>th</sup> 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 17<sup>th</sup> 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 7<sup>th</sup> Street, SW, Room 10276  
Washington, DC 20410-0500  
RIN 2501-AD53

**RE: Credit Risk Retention**

Sirs and Madame:

The undersigned, together with the Securities Industry and Financial Markets Association ("SIFMA"), submit this letter as a supplement to our letter dated October 30, 2013 ("Letter")<sup>1</sup> in

<sup>1</sup> <http://www.sec.gov/comments/s7-14-11/s71411-407.pdf>

The logo for Ashurst LLP, featuring the word "ashurst" in a lowercase, bold, sans-serif font.

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").

In addition to a narrative discussion of our suggested changes to the Proposals, our Letter contained a markup of section \_\_.10 of the Proposals that reflected those changes. Since we filed the Letter, two material events have occurred. First, on December 10, 2013, the Agencies adopted the final regulations implementing Section 13 of the Bank Holding Company Act of 1956, as amended (the "Volcker Rule"). That development has, in turn, led to the restructuring and the proposed restructuring of tender option bond transactions so that they either comply with, or qualify for one or more exemptions from, the Volcker Rule with minimal disruption to the TOB market. In each instance the structural change to existing TOB transactions is designed solely to address compliance with the Volcker Rule and NOT to increase or transfer credit risk associated with the TOB transaction. Second, on December 19, 2013, representatives of the undersigned, the Investment Company Institute ("ICI") and ICI members met with representatives of the Agencies to discuss the TOB market and our suggested changes to the Proposals. During that meeting we discussed certain interpretive questions, including whether the holder of a residual interest (or interests) should be considered the sponsor (or sponsors) of a TOB transaction. We found the meeting to be productive, and are offering some revisions and additions that we feel are consistent with those discussions or otherwise clarify our suggested changes.

In light of these developments, and in the spirit of the Agencies' stated goal to "take into account the heterogeneity of securities markets and practices,"<sup>2</sup> we are providing the following technical changes to the proposed rule text provided in the Letter. The textual changes proposed here do not, in our opinion, reflect substantive changes to the text we proposed in the Letter. Accordingly, we respectfully request that you adopt the rule text attached as Appendix A to accurately reflect the various structures that, now or in the future will, make up the TOB market.

As stated in previous submissions to and conversations and meetings with the Agencies, the current TOB market is large, healthy and critical to the broader financial markets by virtue of, among other things, creating demand in the municipal securities market and serving the demands of the tax exempt money market fund market.<sup>3</sup> We urge the Agencies to adopt a credit risk retention rule that accomplishes their goals without unnecessarily disrupting these markets.

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<sup>2</sup> Notice of proposed rulemaking entitled "Credit Risk Retention" published April 29, 2011 at III.B.

<sup>3</sup> 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, 2012 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>.

The undersigned and our counsel are more than happy to respond to any questions that you may have. Please feel free to contact us by email or telephone. For your convenience our contact information is attached on Appendix B.

Very truly yours,

ASHURST LLP

By: Margaret Sheehan  
Margaret Sheehan

By: William Gray  
William Gray

*SIGNATURES OF PARTICIPATING TOB MARKET PARTICIPANTS AND SIFMA FOLLOW*

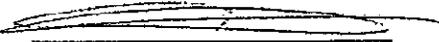
CITIBANK, N.A.

By:

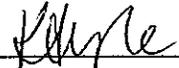
Title:

  
\_\_\_\_\_  
Vice-President  
\_\_\_\_\_

DEUTSCHE BANK AG, NEW YORK BRANCH

By: 

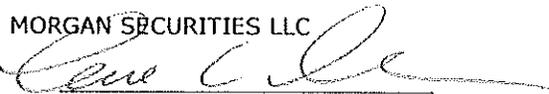
Title: Dennis Tupper  
Managing Director

By: 

Title: KATHLEEN YOHE  
DIRECTOR

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J.P. MORGAN SECURITIES LLC

By: 

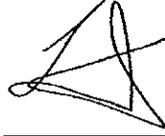
Title: MANAGING DIRECTOR

WELLS FARGO BANK, N.A.

By:  ARTHUR C. EVANS

Title: MANAGING DIRECTOR

SECURITIES INDUSTRY AND FINANCIAL MARKETS  
ASSOCIATION



By: \_\_\_\_\_

Leslie M. Norwood

Title: Managing Director and Associate General  
Counsel

§ \_\_.10 Qualified tender option bonds.

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

Municipal security means a security that is a direct obligation of or issued by, or an obligation guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States or political subdivisions thereof.

Qualified residual interest holder means the holder of a residual interest issued in a qualified tender option bond transaction that:

- (1) qualifies or has an affiliate that qualifies as a regulated liquidity provider; and
- (2) provides, directly or through such affiliate, credit support or enhancement or an irrevocable put option such that amounts will be sufficient to pay 100% of the principal and interest payable to the holders of the tender option bonds.

Qualified tender option bond transaction means a transaction with respect to which each of the following applies:

- (1) The assets relating to such transaction consist solely of servicing assets (including the liquidity facility and credit enhancement, if any, with respect to the securities relating to, and the tender option bonds issued in connection with, such transaction) and municipal securities, preferred stock of registered closed-end investment companies that invest primarily in municipal securities, qualified tender option bond transactions, or securities representing a beneficial ownership interest in any of the foregoing, and such assets and collateral are not subject to substitution;

- (2) Such transaction does not involve securities or interests other than:

- (A) 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

- (B) a single class of residual interests that is entitled to all remaining income.

Both of these types of securities and interests must constitute "asset-backed securities" as defined in Section 3(a)(79) of the Exchange Act (15 U.S.C. 78c(a)(79)); and

- (3) Such transaction includes a liquidity facility provided by a regulated liquidity provider as defined in § \_\_.6(a) to provide, with respect to all of the outstanding tender option bonds issued in connection with such transaction, 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 or other interest that provides the holders with 100% liquidity coverage from a regulated liquidity provider (which may be a residual interest holder or an affiliate thereof) for a purchase price or liquidation amount equal to the face value of the

security or interest, plus accrued interest, if any, at the time of purchase or liquidation, as the case may be.

Tender option termination event has the meaning provided in Section 4.01(5) of IRS Revenue Procedure 2003-84, as amended and supplemented from time to time.

(b) For purposes of section \_\_.10, the sponsor of a qualified tender option bond transaction may be any residual interest holder that is designated as the sponsor in the transaction documents for the transaction that directly or indirectly transfers or causes the transfer of the securities therein in connection with the transaction. If a registered investment adviser so elects, it may undertake to act, and may be designated, as the sponsor of a qualified tender option bond transaction and act on behalf of one or more registered investment companies it manages (in such circumstances, the registered investment adviser is referred to in section \_\_.10 as the "common investment adviser," and the registered investment company advisees are referred to in this section \_\_.10 as, collectively, the "common advisee companies"). If the common investment adviser so elects and is so designated, then (i) the common advisee companies will be required to hold, in the aggregate, the minimum required amount to be retained pursuant to this section with respect to the related qualified tender option bond transaction, (ii) each of the common advisee companies will be required to retain its proportionate share of the aggregate amount required to be retained in respect of the qualified tender option bond transaction in the same proportion the assets each such common advisee company transfers or the common investment adviser of which causes to be transferred on its behalf in connection with the qualified tender option bond transaction bears to the aggregate of all of the assets transferred by or on behalf of the common advisee companies and (iii) the common investment adviser making such election must undertake to perform the duties of the sponsor under this section (other than to hold the retention amount required by this section) on behalf of each of the common advisee companies, or otherwise cause such other duties to be performed. In addition, if the foregoing election is made by the common investment adviser, then whenever the term "sponsor" is used in this section \_\_.10 in the context of determining who is required to maintain the required risk retention amount or with respect to the prohibitions on hedging and transfer in paragraph (h) below, "sponsor" shall be deemed to refer to the common advisee companies.

(c) Standard risk retention. Notwithstanding anything in this section, the sponsor of a qualified tender option bond transaction may retain an eligible vertical interest or eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of §\_\_.4.

(d) Alternative risk retention for qualified tender option bond transactions with tender option termination events. The sponsor of a qualified tender option bond transaction may satisfy its risk retention requirements under this section by retaining a residual interest that upon issuance has a value equal to five percent of the fair value of the securities transferred in connection with the qualified tender option bond transaction with respect to which upon the occurrence of a tender option termination event provides that the residual interest holders will

share in the credit risk of the securities transferred in connection with the qualified tender option bond transaction on a pro rata basis with the holders of the tender option bonds.

(e) Alternative risk retention for sponsors who hold securities outside of the qualified tender option bond transaction. The sponsor of a qualified tender option bond transaction may satisfy its related risk retention requirements under this section by holding securities from the same issuance as the securities transferred in connection with the qualified tender option bond transaction, the face value of which is equal to 5 percent of the face value of the securities transferred in connection with the qualified tender option bond transaction. Such person may reduce the amount retained under this paragraph by the amounts retained under paragraphs (c) or (d) of this section.

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

(g) Disclosures. The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of the tender option bonds or the residual interests sold in connection with a qualified tender option bond 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 issuer in connection with a qualified tender option bond transaction;

(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(c) or \_\_.10(d), or a combination thereof, the fair value of the securities relating to the qualified tender option bond transaction 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(e), 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 (c), (d) or (e) of this section or the specified combination thereof; and

(5) whether the sponsor or a person unaffiliated with the sponsor will hold the interest to be retained.

(h) 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 with respect to tender option bonds issued in connection with a qualified tender option bond transaction. 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 is required to retain with respect to the particular securities relating to the related qualified tender option bond transaction, 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) for the purpose of providing financing to such party with respect to securities referenced in the qualified tender option bond transaction and the qualified tender option bond transaction involves the same securities in the same amount as are to be financed pursuant to the plan of financing.

**CONTACT INFORMATION**

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