July 27, 2012

Department of the Treasury
Office of the Comptroller of the Currency
250 E Street SW, Mail Stop 2.3
Washington, DC 20219

David A. Stawick, Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitutional Avenue NW
Washington, DC 20551

Robert Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Attention: Comments, Federal Deposit Insurance Corporation

Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: **RIN 1557-AD44 [Document No. OCC-2011-0014]; 7100 AD 82; 3064-AD 85; 3235-AL07; RIN 3038-AD05**

Ladies and Gentlemen:

The American Securitization Forum ("ASF")[1] appreciates the opportunity to submit this supplemental letter in response to the request of the Joint Regulators (as defined below) and the CFTC (as defined below) for comments regarding their notices of proposed rulemaking entitled "Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds" (the "Proposed Regulations") (RIN 1557-AD44; 7100 AD 82; 3064-AD 85; 3235-AL07; RIN 3038-AD05),[2] issued pursuant to Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"). Section

[1] The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

[2] *See* http://www.gpo.gov/fdsys/pkg/FR-2011-11-07/pdf/2011-27184.pdf.

619 (the "Volcker Rule") requires the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), the Securities and Exchange Commission (the "SEC" and collectively with the OCC, the Board and the FDIC, the "Joint Regulators"), and the Commodity Futures Trading Commission (the "CFTC") to implement rules to impose certain prohibitions on the ability of a banking entity to engage in proprietary trading and have certain interests in, and relationships with, hedge funds and private equity funds.

ASF submitted a comment letter on February 13, 2012 to the Joint Regulators (the "February 13 Comment Letter") with respect to the Proposed Regulations and subsequently submitted a comment letter to the CFTC on April 13, 2012 reiterating the comments in the February 13 Comment Letter with respect to the notice of proposed rulemaking issued by the CFTC.[3] In the February 13 Comment Letter, we briefly discussed concerns regarding the treatment under the Proposed Regulations of intermediate entities that acquire loans, convert them to asset-backed securities and transfer those asset-backed securities, directly or indirectly, to the ultimate issuers of the loan securitizations.[4] We are submitting the supplemental comment letter after further discussions with our members regarding the potential impact of another issue that involves intermediate entities that act as depositors to issuing entities in securitization transactions. In these discussions, it became apparent that further detail on this issue was warranted given the prevalence of the use of these depositor entities in the securitization market.

Many securitizations of bank assets are structured as "two-step" transactions. In a two-step transaction, a bank originator transfers loans to an intermediate special purpose entity, which in turn acts as a depositor and retransfers the loans to an issuing entity that issues asset-backed securities supported by such loans.[5] Many of such issuing entities are exempt from registration under the Investment Company Act of 1940 (the "Investment Company Act") by Rule 3a-7 or

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[3] *See* http://www.americansecuritization.com/uploadedFiles/ASF_Volcker_Rule_Comment_Letter_2-13-12.pdf and http://www.americansecuritization.com/uploadedFiles/ASF_CFTC_Volcker_Letter_4-13-12.pdf.

[4] In Part II.B of the February 13 Comment Letter, we focused particularly on the treatment of securitization transactions involving equipment and vehicle leases and certain multi-tier master credit card trusts and whether the issuing entities could avail themselves of the Securitization Exclusion in Section 13(g)(2) of the Volcker Rule. In each such structure, the issuing entity does not own loans (as defined in the Proposed Regulations), but rather owns asset-backed securities acquired, directly or indirectly, from an intermediate entity. That intermediate entity acquires loans (as defined in the Proposed Regulations), converts such loans to securities, and then transfers such securities to the affiliated entity which issues asset-backed securities in a securitization transaction. In each instance, these structures are used solely to facilitate the structuring of the securitization transaction and not to resecuritize other outstanding securities, and the asset-backed securities are primarily serviced by cash flows from the underlying pool of loans. We proposed that the ultimate issuing entity have the benefit of the Securitization Exclusion even though such entity would not own loans, but rather securities backed by loans.

[5] Some securitizations of bank assets may be structured as multi-step transactions, involving transfers of loans between more than one intermediate entity, the last of which would act as a depositor to an issuing entity that issues asset-backed securities supported by such loans. These multi-step structures have been used to achieve certain accounting, tax or other business objectives. For example, under the FDIC's securitization safe harbor rule, certain revolving asset master trusts are grandfathered only if they continue to maintain the interposition of an intermediate special purpose entity, which was the manner in which such master trusts satisfied applicable accounting rules.

Section 3(c)(5) and therefore not "covered funds" as such term is defined in the Proposed Regulations. In some asset sectors, those issuing entities would be "covered funds" under the Proposed Regulations because they rely on the exemptions of Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act, but would satisfy the requirements of the Section 13(g)(2) of the Volcker Rule (the "Securitization Exclusion").[6] Accordingly, the ownership or sponsorship of such an issuing entity would be a permissible activity for the originating bank. The status of the depositor entity, however, under both the Investment Company Act and the Proposed Regulations, is unfortunately uncertain.

It is not clear that an intermediate depositor would fall within the definition of "investment company" under the Investment Company Act because such an entity generally acts only as a conduit to transfer the loans from the originating bank to the issuing entity and engages in no discretionary investment or securities issuance activities. To the extent that a depositor entity would fall within the definition of "investment company" under the Investment Company Act, the alternative exemptions of Rule 3a-7 and Section 3(c)(5), which are available to issuing entities, do not appear to be available to the depositor entity. In such circumstances, the depositor entity could virtually always rely on Section 3(c)(1) of the Investment Company Act, but such reliance could cause it to be a "covered fund" under the Proposed Regulations. The depositor entity is not, however, the issuing entity and therefore would not appear to be entitled to rely on the Securitization Exclusion -- even though the depositor's sole activity is generally to acquire and transfer loans (as defined in the Proposed Regulations) for the purpose of facilitating a securitization transaction.

Thus, while the bank originator would be able to securitize its loans through the issuing entity which it owns and/or sponsors, it would arguably be unable to maintain its ownership interest in and contractual relationships with the intermediate depositor entity that functions merely to transfer the loans into the securitization vehicle—which would cause the entire securitization structure to fail.[7] In the view of our members, this result would be illogical and would do nothing to advance the purposes of the Volcker Rule. Furthermore, it would be inconsistent with the Congressional directive contained in the Securitization Exclusion. Lastly, it would potentially cause banks and other entities to unwind hundreds of billions of dollars of existing securitization funding.

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[6] In our February 13 Comment Letter, we discussed how the issuing entities in securitization transactions that rely on Section 3(c)(1) or Section 3(c)(7) are very different in their purposes from private equity funds and hedge funds, and accordingly, proposed that they be excluded from the definition of "covered fund" under the final Volcker Rule regulations. In Part IV of our February 13 Comment Letter, we discussed how without such an exclusion, the prohibitions on "covered transactions" between a bank (or its affiliate) and any covered fund it sponsors or manages in Section __.16 of the Proposed Regulations, would undermine the legislative intent of the Securitization Exclusion.

[7] In our view, the intermediate entities in the chain of transfer in a securitization transaction, even more limited in their purposes and activities than the issuing entities, are also very different from private equity funds and hedge funds and therefore, present the same principled reasons for exclusion from the definition of "covered fund" discussed in preceding note 4.

We therefore respectfully request that the final rule clearly exempt these intermediate entities from treatment as covered funds. Such an exemption should cover both the situations where the related issuing entity is not itself a "covered fund" within the meaning of the final Volcker Rule regulations and is a "covered fund" that a banking entity is permitted to sponsor or own pursuant to the Securitization Exclusion.

ASF very much appreciates the opportunity to provide the foregoing additional comments in response to the Joint Regulators' Proposed Regulations. Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me at 212.412.7107 or at tdeutsch@americansecuritization.com, Evan Siegert, ASF Managing Director, Senior Counsel, at 212.412.7109 or at esiegert@americansecuritization.com, or ASF's outside counsel on these matters, Tim Mohan of Chapman and Cutler LLP at 312.845.2966 or at mohan@chapman.com.

Sincerely,

Tom Deutsch

Tom Deutsch
Executive Director
American Securitization Forum