Ashurst LLP
1875 K Street NW
Washington, DC 20006

Tel +1 202 912 8000
Fax +1 202 912 8050

www.ashurst.com

August 1, 2011

Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219
Docket Number OCC-2011-0002
RIN 1557-AD40

Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington. DC 20551
Docket Number 2011-1411
RIN 7100-AD70

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th 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 7th Street, SW, Room 10276
Washington, DC 20410-0500
RIN 2501-AD53

RE: Credit Risk Retention

Sirs and Madames:

Ashurst LLP is a limited liability partnership registered in England and Wales under number OC330252. It is a law firm regulated by the Solicitors Regulation Authority of England and Wales. A list of members of Ashurst LLP, and the non-members who are designated as partners, and their professional qualifications is open to inspection at its registered office Broadwalk House, 5 Appold Street, London EC2A 2HA. The term "partner" in relation to Ashurst LLP is used to refer to a member of Ashurst LLP or to an employee or to a consultant with equivalent standing and qualifications. Ashurst LLP or an affiliated undertaking has an office in each of the places listed below.

ABU DHABI BRUSSELS DUBAI FRANKFURT HONG KONG LONDON MADRID MILAN
MUNICH NEW YORK PARIS SINGAPORE STOCKHOLM TOKYO WASHINGTON DC

The undersigned sponsors[1] of tender option bond programs (such undersigned sponsors and other sponsors of such programs being collectively referred to as "TOB Program Sponsors") submit this letter in 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" or "Commission"); the Federal Housing Finance Agency; and the Department of Housing and Urban Development (collectively, the "Agencies") for comments on 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. The undersigned TOB Program Sponsors appreciate the opportunity to comment on the Proposals.

Specifically, the undersigned TOB Program Sponsors firmly believe that TOB Programs should be identified as transactions that "would be properly exempted from the risk retention requirements" that would be imposed on securitization transactions generally under the Proposals. While TOB Programs could be considered to be securitization transactions and certain TOB Program participants could be considered to be securitizers, TOB Programs differ in the most fundamental ways from most other types of securitization transactions. It is precisely these fundamental characteristics of TOB Programs that prevent TOB Programs from giving rise to the excessive risk-taking that the Proposals have been designed to address. Accordingly, no justification exists for, and no benefit would be gained by, subjecting TOB Programs to such requirements.

Background

For nearly twenty years, TOB Program Sponsors have used tender option bond programs ("TOB Programs") as a vehicle to finance the acquisition of tax-exempt debt securities issued by state and local United States governments ("municipal securities"). Developed as a tax-efficient alternative to repurchase agreements, TOB Programs have become an indispensable source of funding for the municipal securities market and an important source of supply for the tax-exempt money markets, with approximately $85-$100 billion of municipal securities currently on deposit in TOB Programs.

In order to be eligible for deposit into a TOB Program, the municipal securities must be of high credit quality or enhanced by credit enhancement that ensures high credit quality for the protection of investors.

In a TOB Program, typically the TOB Program Sponsor (or in some cases, a third-party institutional or high net worth investor) acquires municipal securities available in the market and deposits them into a trust, which in turn issues two classes of securities: (a) floating rate certificates (each a "TOB Floater") sold to tax-exempt money market funds regulated by Rule 2a-7 of the Investment Company Act of 1940 ("Rule 2a-7"), and (b) inverse floating rate certificates (each a "TOB Inverse Floater") issued to either the TOB Program Sponsor (or an affiliate of the TOB Program Sponsor) or such third-party investor.[2]

Both classes of TOB Program certificates evidence beneficial ownership interests in, and are collateralized by, the underlying municipal securities, and both classes of TOB Program certificates allow the holder to receive payments primarily from the cash flows from the municipal securities. Accordingly, even though TOB Programs are merely financing tools and are not designed or used to transfer investment risk from one party to another, a TOB Program security could be considered to be

[1] Each of the undersigned sponsors is a "banking entity" as defined in section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[2] We have attached at Appendix A to this letter a more detailed description of TOB Program assets and the TOB Program structure.

an "asset-backed security,"[3] and the TOB Program Sponsor, or a third-party investor who selects the municipal securities to be deposited into the TOB Program trust, could be considered to be a "securitizer,"[4] as those terms are defined in section 15G.

TOB Programs and Section 15G

The undersigned TOB Program Sponsors believe that TOB Programs should be exempt from the risk retention requirements of section 15G for the following reasons, each of which is supported by both the legislative history of section 15G and the policy objectives articulated in the Proposing Release, as set forth below:

- **TOB Programs are almost uniformly used for the purpose of financing municipal securities, not to transfer material investment risks; in fact, TOB Program Sponsors (and holders of TOB Inverse Floaters, if unrelated to the TOB Sponsor) retain material investment risks.**
  - *"Faults in the system included a securitization process that fuelled excessive risk taking by permitting mortgage originators to quickly sell the unsuitable loans they made, and thereby transfer the risk to someone else..." S. Rep. No. 111-176, at 43 (2010).*
  - *"The risk retention requirements added by section 15G are intended to help address problems in the securitization markets by requiring that securitizers, as a general matter, retain an economic interest in the credit risk of the assets they securitize." Proposing Release at I.*
- **The TOB Program structure ensures that the interests of the securitizer are closely aligned with those of the TOB Floater holders.**
  - *"When securitizers retain a material amount of risk, they have "skin in the game," aligning their economic interests with those of investors in asset-backed securities. Securitizers who retain risk have a strong incentive to monitor the quality of the assets they purchase from originators, package into securities, and sell." S. Rep. No. 111-176, at 128 (2010).*
  - *"...section 15G....helps align the interests of the securitizer with the interests of the investors," Proposing Release at I.*
- **TOB Program assets are high quality and are typically publicly issued debt securities that are rated and are subject to the anti-fraud provisions of federal securities laws.**
  - *"The Committee expects that these regulations will recognize differences in the assets securitized, in existing risk management practices, and in the structure of asset-backed securities, and that regulators will make appropriate adjustments to the amount of risk retention required." S. Rep. No. 111-176, at 130 (2010).*

---

[3] The term "asset-backed security" is defined to mean "a fixed income or other security collateralized by any type of self-liquidating financial asset...that allows the holder of the security to receive payments that depend primarily on cash flow from the asset...."

[4] The term "securitizer" is defined to mean "the 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...to the issuer."

- *"[I]n circumstances where the assets collateralizing the ABS meet underwriting and other standards that should ensure the assets pose low credit risk, the statute provides or permits an exemption." Proposing Release at I.*

- **The TOB Program structure provides all participants with transparency regarding the TOB Program assets.**

  - *"[I]t proved impossible for investors in asset-backed securities to assess the risks of the underlying assets, particularly when those assets were resecuritized into complex instruments....With the onset of the crisis, there was widespread uncertainty regarding the true financial condition of holders of asset-backed securities, freezing interbank lending and constricting the general flow of credit. Complexity and opacity in the securitization markets created the conditions that allowed the financial shock from the subprime mortgage sector to spread into a global financial crisis..." S. Rep. No. 111-176, at 128 (2010).*

  - *"...the assets classes specified in section 15G...capture a predominance of all ABS issuances by dollar volume where the underlying pool is comprised of relatively homogeneous assets. Moreover, general information about ABS issuances collateralized exclusively by [these assets] is widely available and, due to the homogeneity of the underlying pool, lends itself to the establishment of uniform underwriting standards establishing low credit risk for all of the assets within the pool. These characteristics also should facilitate the ability of investors and supervisors to monitor a sponsor's compliance...In contrast, many of the other types of ABS issuance are collateralized by assets that exhibit significant heterogeneity, or assets that by their nature exhibit relatively high credit risk." Proposing Release at V.A.*

- **TOB Programs are vital to both the municipal securities market and the tax-exempt money markets.**

  - *"[A] 'one size fits all' approach to risk retention may adversely affect certain securitization markets...." S. Rep. No. 111-176, at 130 (2010).*

  - *"...in designing...the proposed rules...the Agencies have sought to ensure that the amount of credit risk retained is meaningful...while reducing the potential for the proposed rules to negatively affect the availability and cost of credit to consumers and businesses." Proposing Release at I.*

For ease of your review, we have organized our letter by the specific requests for comment to which we are responding.

1. REQUESTS FOR COMMENT 173(A) AND (B)

1.1 *Requests for comment 173(a) and (b) ask: Are there securitization transactions that would not be covered by the exemptions in the proposed rules that should be exempted from risk retention requirements pursuant to section 15G(e)(3) of the Exchange Act?*[5] *If so, what are*

[5] Section 15G(c)(1)(G)(iii) exempts from the statutory risk retention requirements asset-backed securities that are issued by states and municipalities. Because the securities that are issued under TOB Programs are issued by a TOB Trust (and not by states or municipality), technically TOB securities may not satisfy the requirements for the Section 15G(c)(1)(G)(iii) exemption.

the features and characteristics of such securitization transactions that would properly exempt them from risk retention requirements pursuant to section 15G(e)(3)?

1.2 Imposing the risk retention requirements of section 15G on TOB Programs is not necessary to achieve the purposes of the law. According to the Agencies and supported by the legislative history, as we have noted above, the reason for the statutory exemptions to the risk retention requirements of section 15G, as well as those exemptions contained in the Proposals, is that the underwriting requirements, eligibility standards and product features of those securitization products already ensure high credit quality and low credit risk to the markets. TOB Programs meet these standards for exemption, and subjecting them to the risk retention requirements would not further the purpose of section 15G.

(a) **Imposing the risk retention would not affect underwriting quality or help to align incentives of market participants.** The underlying assets typically are originated in the primary market without the involvement of the TOB Program Sponsor, who typically purchases the assets on the secondary market.[6]

(b) **The underlying collateral has very low credit risk.** TOB Programs are structured to meet the credit quality requirements of Rule 2a-7 so that tax-exempt money market funds can purchase the TOB Floaters. In order to meet the Rule 2a-7 requirements, the underlying municipal securities either (i) must be rated AA-, or (ii) if not rated high enough, must be the subject of a credit enhancement arrangement to meet the minimum rating. The credit ratings on the TOB Floaters and the TOB Inverse Floaters are based on the credit ratings of the underlying municipal securities (and any applicable credit enhancement arrangement) and not from structural elements of the TOB Program itself.

(c) **TOB Programs are financing vehicles that are used because more traditional forms of securities financing are inefficient in the municipal securities market; TOB Programs are not intended to, and do not, transfer material investment risk from the securitizer to investors.** The securitizer in a TOB Program (whether the TOB Program Sponsor or a third-party investor) has 'skin in the game' by virtue of (i) the nature of the TOB Inverse Floater interest it owns, which represents ownership of the underlying municipal securities and is not analogous to other types of asset-backed securities programs, and/or (ii) its provision of liquidity support and/or credit enhancement, or its obligation to reimburse the provider of liquidity support and/or credit enhancement for any losses. The securitizer is ultimately responsible for nearly all of the market and/or credit risk of the underlying municipal securities, and the portions of risk for which it is not responsible are driven entirely by federal tax law in order to ensure that the return on the TOB Floaters is tax-exempt. As a result, it is unnecessary to subject TOB Program Sponsors or third-party securitizers to a statutory risk retention requirement because they already retain a substantial portion of the risk.

(d) **There is no tranching of credit risk**. Unlike many securitization programs where the primary purpose is to transfer substantially all of the investment risk from a sponsor to an investor through credit tranching, TOB Programs do not create different tranches

[6] As noted in Appendix A, a TOB Program Sponsor or an affiliate that is a broker-dealer may on occasion participate in the underwriting of the underlying municipal securities, subject to applicable securities laws and other customary legal and rating agency requirements.

based on credit risk. Neither the TOB Floaters nor the TOB Inverse Floaters carry a 'first loss' credit risk position. When a TOTE occurs, the liquidity facility will terminate immediately and the holders of the TOB Floaters and TOB Inverse Floaters will share pro rata in the credit risk of the underlying municipal security.

(e) **The existence of the liquidity facility (i) provides additional protection for the TOB Floater investors and (ii) ensures that the underlying assets are being monitored for credit quality.** The liquidity provider bears all or a portion of the market risk of the difference between the par amount of outstanding TOB Floaters and the market value of the underlying municipal securities. Accordingly, it is in the interest of the liquidity provider to diligently monitor the credit quality and corresponding market value of those securities.

(f) **Credit enhancement on the underlying assets ensures ongoing monitoring of those assets**. If an underlying municipal security is not rated AA- or better, the TOB Program Sponsor must provide or arrange credit enhancement in order for the TOB Floaters to meet the ratings requirements of Rule 2a-7. Because the credit enhancer bears the credit risk on the underlying municipal securities, it is in the interest of the credit enhancer to closely monitor the credit of those securities and to impose triggers that will permit the credit enhancer to collapse the TOB Trust in order to minimize its losses.

1.3 The logic and analysis that underlie existing or proposed exemptions for other financing structures also apply to TOB Programs; in fact, TOB Programs are as safe or safer than programs that either already are exempt by statute or are proposed to be exempt by rule. Because the underlying municipal securities are generally high quality and the purpose of TOB Programs is not to transfer any material investment risk to investors, the existing and proposed exemptions provide both a roadmap and a justification for exempting TOB Programs.

(a) For example, Section 15G exempts from the risk retention requirements asset-backed securities ("ABS") for which qualifying residential mortgages ("QRMs") are the sole collateral. According to the Proposing Release, the proposed rules defining QRMs are designed to ensure that the underwriting standards and product features associated with QRM programs ensure "very high credit quality" of collateralizing assets.[7] According to the Agencies, these mortgages were still a low credit risk in stressful economic environments that combine high unemployment with sharp drops in house prices.[8]

(i) The characteristics of municipal securities that underlie TOB Programs and TOB Program features compare very favorably to the eligibility criteria for QRMs:

(A) The QRM eligibility criteria are designed to ensure creditworthiness; however, the assets underlying the securitization program are (i) privately negotiated loan transactions the risks of which relate to the ability of an individual homeowner to meets its financial obligations and

---

[7] See Proposing Release at IV.A.

[8] Id.

(ii) backed by a residence, about which the originator often is the sole party to have any information, and on which is difficult if not impossible for a third party to perform diligence. Neither the loans nor the assets collateralizing them (i.e., residences) are rated by a credit rating agency, neither is subject to a disclosure document covered by the antifraud provisions of the securities laws, and neither the loans nor the collateral have any liquidity or can be marked to market easily. This makes it difficult for a party to monitor the performance of the loans or to sell them in the event that they become nonperforming.[9]

(B) Unlike QRMs, the offer and sale of municipal securities are subject to the antifraud provisions of the federal securities laws; the municipal securities have been rated by an independent credit rating agency; they are debt obligations that are either very high quality (i.e., they have received a rating of AA- or better) or are the subject of credit enhancement arrangement; there is a secondary market for these securities, which makes them capable of being priced and sold; they are typically the subject of a fulsome disclosure document that is governed by securities law disclosure requirements; they are underwritten or otherwise offered by broker-dealers that are subject to the antifraud provisions of the federal securities laws; and they are often held directly in the portfolios of investors seeking a safe investment with a steady income stream.

(C) Like QRMs, municipal securities are of "very high credit quality" and posed a very low credit risk during stressful economic environments, as evidenced both by (i) the extremely low default rate of municipal securities during the recent financial crisis and (ii) the extremely low historical default rate of municipal securities over the past decades. Each issuance of municipal securities is subject to significant legal and market restraints that impose stringent creditworthiness requirements and fiscal discipline on issuers, such as state constitutional and statutory restrictions, governmental and voter approval requirements, rating agency requirements, investor due diligence and scrutiny, applicable tax laws, continuing reporting requirements and market transparency. As a result, the underlying municipal securities do not represent an asset class that is subject to "bubbles" or debt origination driven primarily by runaway market appetite or pursuit of profit regardless of risk.

(D) In addition, TOB Program characteristics also provide protection for investors. The liquidity facility ensures that the TOB Floaters can be sold at par for any or no reason; both the TOB Floaters and the TOB Inverse Floater are highly rated; the underwriter of the collateral is almost always a separate entity from the TOB Program Sponsor, so that there is no incentive to engage in shoddy underwriting; the underlying collateral is usually a single municipal security or the securities of a single municipal issuer (or if multiple municipal credits are pooled into a single trust, specific written deposit criteria govern the eligibility of additional assets for deposit), so investors can (and do) know the exact collateral composition; and the pass-through nature of the Program trust ensures

[9] The same general facts are true with respect to commercial real estate loans, commercial loans and automobile loans. With respect to each of these asset types, the Agencies have proposed a risk retention requirement of zero for loans that meet eligibility criteria designed to ensure that they are of very low credit risk.

that investors have access to detailed information about collateral composition and that they are informed in advance of any proposed collateral transactions. **The very high credit quality of TOB Programs is demonstrated by the fact that to our knowledge no TOTE (as defined in Appendix A) has ever occurred.**

(ii) TOB Programs have performed reliably and safely in the capital markets for almost twenty years without problems, including during the recent financial crisis. They provide a stable market in which investors can finance their investment in municipal securities, in turn providing funding for the long-term financing needs of state and local governments. TOB Programs also provide a valuable source of high quality investment product for tax-exempt money market funds.

(b) Section 15G(c)(1)(G)(ii) exempts from the risk retention requirements asset-backed securities issued by the US government *or collateralized by* assets issued or guaranteed by the US government. This exemption is appropriately based on the nature of the asset as presenting extremely low credit risk rather than the status of the securitizer as a governmental entity. Section 15G(c)(1)(G)(iii) exempts from the statutory risk retention requirements asset-backed securities that are issued by states and municipalities. The Proposing Release states with respect to this exemption that "in light of the special treatment afforded such securities, the directive in section 15G, and the role of the state or municipality in issuing, insuring, or guaranteeing the ABS *or collateral*, the Agencies are proposing to exempt such ABS from the risk retention requirements of the rule...." Notwithstanding this language, the current statutory exemption technically would *not include asset-backed securities collateralized by* securities issued by states and municipalities. We agree that asset-backed securities that are issued by states and municipalities should be exempt from the risk retention requirements, but we believe that programs such as TOB Programs that are collateralized by municipal securities should be exempt as well because whether or not the issuer of the asset-backed security is a governmental entity is not relevant to the analysis. In addition, in a TOB Program, the credit risk is actually *lower than* the credit risk of the underlying asset because of the liquidity feature. We do not see a distinction between the risks of US securities and those of municipal securities that would justify or explain the inclusion of asset-backed securities collateralized by the one and not the other. For the same reasons that an asset-backed securities program that is collateralized by assets issued or guaranteed by the US government is unlikely to present default risk because the collateral assets are extremely safe and there is nothing about the program itself that creates increased risks for investors, the nature of the collateral and structure of a TOB Program ensures that they are safe for investors. Nor does the legislative history of section 15G provide an explanation for the different treatment. We therefore respectfully suggest that the Agencies should exempt by rule securitizations in which the underlying collateral consists solely of municipal securities.

(c) TOB Program Sponsors use TOB Programs almost exclusively for the purpose of efficiently financing municipal securities, because repurchase agreements (which economically are substantially the same as TOB Programs but which are not subject to the skin-in-the-game rules) cannot be used for municipal securities due to certain tax inefficiencies relating to pass-through of tax-exempt income to investors. The only economic differences between TOB Programs and repurchase agreements[10] are not

[10] Those differences are (i) TOTEs and (ii) Gain Share (as defined in Appendix A).

designed to reallocate risk but arise from technical requirements of TOB Programs that are designed *solely* to comply with federal income tax rules applicable to pass-through of tax-exempt income to the Holders of the TOB Program certificates. The application of the skin-in-the-game rules should not depend on the form of the structure but rather on the substance of the transaction: Like repurchase agreements, TOB Programs should not be subject to risk retention requirements.

1.4 Exchange Act Section 15G(e) permits additional exemptions, including for classes of institutions or assets, if they would: (i) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (ii) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors. TOB Programs meet these standards.

1.5 The Agencies should use their authority under section 15G(c)(1)(G)(i) to create a separate exemption for TOB programs.

2. REQUEST FOR COMMENT 152

2.1 *Request for comments 152 asks: Should additional asset classes beyond those specified in section 15G be established and if so how should the associated underwriting standards for such additional asset classes be defined?*

2.2 As an alternative to providing a blanket exemption for TOB Programs, the Agencies should use their authority under section 15G(c)(1)(B)(ii) and (C)(2)(B) to identify municipal securities as an asset class and establish underwriting standards that indicate a low credit risk and provide for no retention requirement. For the reasons set forth above, we believe that municipal securities generally, and in particular those that serve as collateral in TOB Programs (either on a stand-alone basis or as supported by a credit enhancement arrangement), clearly represent a low credit risk. Municipal securities have a very low rate of default and are generally considered to be a safe and conservative investment.

2.3 We suggest that the appropriate underwriting standards applicable to municipal securities eligible for a reduced or no retention requirement are the credit quality restrictions of the Rule 2a-7 eligibility standards. This approach would as a practical matter exempt from the risk retention requirements any TOB Program that issues only Rule 2a-7 eligible securities. Such TOB Programs make up a material part of the market for municipal securities, and money market funds in turn make up a majority of the market for the TOB Floaters. Accordingly, reducing or removing the risk retention requirements for asset-backed securities programs issuing Rule 2a-7 eligible securities will protect the municipal securities market and the money market fund market without increasing risk to markets or investors.

3. REQUEST FOR COMMENT 12(A) AND 12(B)

3.1 *Requests for comment 12(a) and 12(b) ask: Would the minimum five percent risk retention requirement, as proposed to be implemented, have a significant adverse effect on liquidity or pricing in the securitization markets for certain types of assets? If so, what adjustments to the proposed rules (e.g., the minimum risk retention amount, the manner in which credit*

exposure is measured for purposes of applying the risk retention requirement, or the form of risk retention) could be made to the proposed rules to address these concerns in a manner consistent with the purposes of section 15G? Please provide details and supporting data.

3.2 Imposing a 5% risk retention requirement on TOB Program Sponsors (and/or securitizers who are third-party holders of TOB Inverse Floaters) would have significant adverse effects on liquidity and pricing in the municipal securities and tax-exempt money markets.

(a) TOB Programs provide a significant source of funding for the municipal securities market. An estimated $85 - $100 billion in municipal securities are currently being financed in TOB Trusts. If a risk retention requirement is imposed on TOB Program Sponsors and/or third-party securitizers, thereby requiring that they increase their investment in each trust, the amount of capital available for additional similar investments will be reduced, increasing the cost of funding for the constituents of state and local governments and municipalities.

(b) TOB Floaters represent a significant portion of the supply of short-term tax-exempt investments available for money market participants. If a risk retention requirement is imposed on TOB Program Sponsors and/or third-party securitizers, there will be a significant reduction in TOB Programs and reduced investment opportunities for the individual and institutional investors in money market funds. We note that the July 29, 2011 letter submitted to the Agencies by the Investment Company Institute requests that TOB Programs be exempted from the Proposals, stating that subjecting TOB Program Sponsors to the proposed risk retention requirements "could significantly reduce the availability of [TOB Programs] for tax-exempt money market funds...."[11]

[11] Letter to the Agencies from the Investment Company Institute (July 29, 2011), p. 9.

4. CONCLUSION

4.1 For the reasons set forth above, we believe that the Agencies should exempt TOB Programs from the risk retention requirements of section 15G.

The undersigned TOB Sponsors and our counsel are more than happy to respond to any questions that you may have and/or to discuss TOB Programs more generally in the context of the changing legal landscape. We could be available to meet with any of the Agencies at your convenience, and/or you may contact us by email or telephone. For your convenience our contact information is attached on Appendix B.

Very truly yours,

ASHURST LLP

By: Joyce Gorman

By: Margaret Sheehan

SIGNATURES OF PARTICIPATING TOB SPONSORS FOLLOW

Citibank, N.A.

By: _____

Title: Vice President

DEUTSCHE BANK AG, NEW YORK BRANCH

By: _____

Title: Director

ashurst

SOCIÉTÉ GÉNÉRALE, NEW YORK BRANCH

By:

Title: François Bartholomy

Hd of Global markets - Americas

ashurst

WELLS FARGO BANK, N.A.

By: _____

Title: ARTHUR C. EVANS, SVP

ashurst

DESCRIPTION OF TOB PROGRAM ASSETS AND TOB PROGRAM STRUCTURE

TOB Program Assets

Typically the TOB Trust assets consist of a single issue of highly rated, fixed rate, long term municipal securities of a single municipal issuer.[1] In the less common instance in which TOB Trust assets consist of the securities of more than one municipal issuer, the TOB Trust has specific, written deposit criteria governing the eligibility of assets for deposit. In either case, because the municipal securities deposited and/or eligible for deposit are both limited and specified in advance, holders of both classes of TOB Program certificates know exactly what assets are (or in the future may be) deposited in the TOB Trust. In addition, if additional deposits are permitted in accordance with the established eligibility criteria, the investors holding TOB Floaters are apprised in advance of any such deposit and may elect not to continue their investment after the deposit, in which case they are entitled to payment of their TOB Floaters at par

In order to ensure that the TOB Floaters meet the portfolio security eligibility requirements of Rule 2a-7, the municipal securities in a TOB Trust either are rated AA- or better by an independent credit rating agency or are the subject of a credit enhancement arrangement that results in a rating of at least AA-. An official statement or other detailed disclosure document covers each offering of municipal securities, and the antifraud provisions of the securities laws apply to purchases and sales. In cases where there may not be a detailed underlying disclosure document, the underlying municipal securities are wrapped by credit enhancement and the TOB Trust provides the TOB Floater holders and the TOB Inverse Floater holder with disclosure about the credit enhancement.

Because a secondary market generally exists for municipal securities, they are liquid and are capable of being marked to market. The broker-dealers selling municipal securities are also subject to the antifraud provisions of the federal securities laws as well as the disclosure and sales practice rules of the Financial Industry Regulatory Authority. Municipal securities are considered very safe investments and offer a steady income stream, making them a common component of investors' portfolios.

TOB Floaters

TOB Floaters are variable rate, short-term, high quality, liquid securities whose price is equal to their face amount. TOB Floaters bear interest at a variable interest rate, reset periodically based on prevailing short-term tax-exempt market rates, which generally are lower than the fixed rate payable on the underlying municipal securities. They are typically entitled to 5-10% of any capital gain ("Gain Share") realized upon any sale of the municipal securities from the TOB Trust (a requirement driven by tax law). Under most circumstances, the TOB Floater holders have the right to tender their interests, for any reason or no reason, for a repurchase price equal to 100% of the face amount of the TOB Floaters, plus accrued interest, on any date on which the Floating Rate is reset.[2] The tender option allows those TOB Floater holders that are money market funds (offering a stable net asset value of $1 per share pursuant to Rule 2a-7) to treat the TOB Floaters as having an extremely short maturity, i.e., the next interest rate reset date.

---

[1] The municipal issuer generally does not work with or coordinate with any TOB Program Sponsor when issuing the municipal securities, although a TOB Program Sponsor or an affiliate that is a broker-dealer may on occasion participate in the underwriting of the underlying municipal securities, subject to applicable securities laws and other customary legal and rating agency requirements.

[2] TOB Floaters also are subject to mandatory tender under certain circumstances.

ashurst

The purchase of TOB Floaters is limited to "Accredited Investors," as defined in Rule 501(a)(1)-(3) of Regulation D under the Securities Act of 1933 and "Qualified Purchasers," as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940, who possess such "knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in...and are able and prepared to bear the economic risk of investing in" the TOB Floaters. Any investor who purchases TOB Floaters must, prior to investing, provide written attestation of the foregoing. The primary buyers of TOB Floaters are Rule 2a-7-regulated, tax-exempt money market funds. For this reason, if there are any future changes to the credit quality requirements of Rule 2a-7, TOB Program Sponsors will amend TOB Program terms to conform to the new credit requirements so that TOB Floaters are always eligible securities.

The tender option feature of TOB Floaters is made possible through a liquidity facility that provides funds for payment of both principal and interest on the TOB Floaters whenever a TOB Floater holder exercises its tender option or a TOB Floater is called for mandatory tender.[3] The liquidity facility may be provided by the TOB Program Sponsor, one of its affiliates or another bank or other entity. The liquidity provider's obligation to pay the TOB Floater holders terminates without notice upon the occurrence of any of the following very limited and remote events known as "TOTEs" (an acronym for "Tender Option Termination Events"): a default on the underlying municipal securities and credit enhancement, where applicable; a credit rating downgrade below investment grade; the bankruptcy of the issuer and, when applicable, the credit enhancer; or the determination that the municipal securities are taxable. (Like Gain Share, inclusion of TOTEs in TOB Program structures is required for tax reasons.)

In most instances, the liquidity provider is the same entity as, or an affiliate of, the holder of the TOB Inverse Floater. When that is not the case, the liquidity provider typically requires that the holder of the TOB Inverse Floater enter into a reimbursement agreement with the liquidity provider to reimburse the liquidity provider for all amounts paid to TOB Floater holders and not otherwise reimbursed from a remarketing of tendered TOB Floaters or, if the TOB Floaters are not remarketed, from the proceeds of sale of the municipal securities. Because the liquidity provider bears the market risk of any difference between the par amount of TOB Floaters outstanding and the market value of the municipal securities (whose sale would generate proceeds to reimburse the liquidity provider for any liquidity draws) the liquidity provider typically has the right to direct the termination of the TOB Trust prior to the occurrence of a TOTE. If the liquidity provider exercises this termination right, it must pay the TOB Floater holders in full.

TOB Inverse Floater

The TOB Trust issues a TOB Inverse Floater that synthetically creates the economic equivalent of a leveraged position in the underlying municipal securities. The price of the TOB Inverse Floater is generally a nominal amount. The TOB Inverse Floater holder receives all interest on the municipal securities not paid to the TOB Floater holders (net of the TOB Trust's expenses) as well as 90-95% of any Gain Share recognized upon any sale of the municipal securities. The TOB Inverse Floater holder has the right, exercisable at periodic intervals, to cause the sale of the municipal securities and the forced redemption of the TOB Floaters for 100% of par value plus accrued interest and the applicable Gain Share. TOB Inverse Floaters typically have significant restrictions on transfer. In addition, there is no established secondary market for TOB Inverse Floaters.

In many cases, the TOB Inverse Floater holder is the TOB Program Sponsor or an affiliate of the TOB Program Sponsor. In cases in which the TOB Inverse Floater holder is not the TOB Program Sponsor or an affiliate, it is a third party institutional or high net worth investor.

---

[3] The TOB Floaters have a short-term credit rating (based on the short-term rating of the liquidity provider) as well as a long-term credit rating (based on the credit quality of the assets on deposit in the TOB Trust, including any credit enhancement). The combination of a high quality credit rating and a short-term rating makes TOB Floaters eligible for purchase by money market funds.

ashurst

Tax and Accounting Treatment of TOB Program Certificates

TOB Program Sponsors design TOB Programs so that the tax-free nature of the income on the underlying municipal securities passes through to the TOB Floater holders and the TOB Inverse Floater holder. In order to ensure pass-through tax treatment, TOB Programs provide for termination of the liquidity facility upon the occurrence of a TOTE, the pro rata sharing of credit risk as between the TOB Floater holders and the TOB Inverse Floater holder, and the Gain Share payable to TOB Floater holders. These features provide the necessary indicia of ownership to allow the income to remain tax-free to the holders of the TOB receipts.

For accounting purposes, the TOB Inverse Floater holder typically carries the underlying municipal securities as assets and the TOB Floaters as debt, because the TOB Inverse Floater holder is acquiring the municipal securities and financing its acquisition with the proceeds of the TOB Floaters.

ashurst

APPENDIX B

CONTACT INFORMATION

Ashurst LLP, counsel to the participating TOB Sponsors

1875 K Street, NW
Washington, DC 20006

Joyce Gorman, Esq.
Phone: 202.912.8003
Email: joyce.gorman@ashurst.com

Margaret Sheehan, Esq.
Phone: 202.912.8008
Email: margaret.sheehan@ashurst.com

Citibank, N.A.

390 Greenwich Street
5th Floor
New York, NY 10013

David Brownstein
Phone: 212 723 5570
Email: david.m.brownstein@citi.com

Peter O'Connor
Phone: 212 723 7611
Email: peter.w.oconnor@citi.com

Deutsche Bank AG, New York Branch

60 Wall Street
3rd Floor
New York, NY 10005

Dennis Tupper
Phone: 212 250 8257
Email: dennis.tupper@db.com

Kathleen Yohe, Esq.
Phone: 904 527 6112
Email: kathleen.yohe@db.com

Société Générale, New York Branch

1221 Avenue of the Americas
New York, NY 10020

Le Chen
Phone: 212 278 7103
Email: le.chen@sgcib.com

Patricia Epstein, Esq.
Phone: 212 278 7119
Email: patricia.epstein@sgcib.com

ashurst

Wells Fargo Bank, N.A.

MAC A0112-144
550 California St
14th Floor
San Francisco, CA
94104-1004

Arthur Evans
Phone: 415-396-3315
Email: evansart@wellsfargo.com

ashurst