

Japanese Bankers Association

3-1, Marunouchi 1-chome, Chiyoda-ku,
Tokyo 100-8216, Japan
Tel +81-3-5252-4316
Fax +81-3-3214-3429

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Board of Governors of the Federal Reserve System (FRB)
20th Street and Constitution Avenue, NW.,
Washington, DC 20551
12 CFR Part 244
[Docket No. R-1411]
RIN 7100-AD70

Federal Deposit Insurance Corporation (FDIC)
550 17th Street, NW., Washington, DC 20429
12 CFR Part 373
RIN 3064-AD74

Office of the Comptroller of the Currency (OCC)
250 E Street, SW., Mail Stop 2-3,
Washington, DC 20219
12 CFR Part 43
[Docket No. OCC-2011-0002]
RIN 1557-AD40

Federal Housing Finance Agency (FHFA)
Fourth Floor, 1700 G Street, NW.,
Washington, DC 20552
12 CFR Part 1232
RIN 2590-AA43

Securities and Exchange Commission (SEC)
100 F Street, NE., Washington, DC 20549
17 CFR Part 246
[Release No. 34-64148; File No. S7-14-11]
RIN 3235-AL96

Department of Housing and Urban Development (HUD)
451 7th Street, SW., Room 10276,
Washington, DC 20410-0500
24 CFR Part 267
RIN 2501-AD53

Re: Proposed Rulemaking on *Credit Risk Retention*

Ladies and Gentlemen:

The Japanese Bankers Association (JBA) is an industry association of 140 Japanese banks and 46 non-Japanese banks with operations in Japan.

JBA appreciates the opportunity to comment on the Proposal, *Credit Risk Retention*, released April 29, 2011, by the Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission (SEC), Federal Housing Finance Agency (FHFA), and the Department of Housing and Urban Development (HUD).

The proposed rules would mandate that the risk retention requirements (5 percent) that apply to ABS securitizers also apply to sponsors and originators for securitized instruments that are structured outside the U.S. when more than 10 percent of the dollar value is sold to U.S. persons. We

believe that securitization instruments originated outside the U.S. should not be subject to the proposed rules. However, since we are concerned that these rules would also negatively affect the securitization business outside the U.S., we ask that the rules be introduced only after careful consideration of securitized instrument practices in other countries.

We hope that our comments below will assist the U.S. Agencies in finalizing the rule going forward.

1. Credit Risk Retention Requirements

(1) Treatment of eligible ABCP conduits (pages 38 – 42)

(a) Fully-supported ABCP conduits should be exempted from credit risk retention requirements (page 41)

The proposed rules would in principle require even the sponsor of an ABCP conduit to retain a 5 percent credit risk (page 41, second paragraph). We think that this is based on the belief that the sponsor should have some sort of interest because it is actively involved in the selection of the structures and assets.

However, as for fully-supported ABCP conduits, the originators/sellers and sponsors that hold the subordinated portion hold all the credit risk, and clearly hold continuous interest. Therefore, we think that fully-supported ABCP conduits should be exempted from the credit risk retention requirements.

(b) Criteria for eligible ABCP conduits should be reconsidered (pages 40-42)

The proposal lists four criteria for eligible ABCP conduits: 1) *the issuing entity must be bankruptcy-remote from the sponsor and any intermediate SPV*; 2) *the ABS issued by an intermediate SPV to the issuing entity must be collateralized solely by the assets originated by a single originator-seller*; 3) *all the interests issued by an intermediate SPV must be transferred to one or more ABCP conduits or retained by the originator-seller*; and 4) *a regulated liquidity provider must have entered into a commitment to provide 100 percent liquidity coverage to all the ABCP issued*.

However, some aspects of criteria 2) and 3) for eligible ABCP conduits are not relevant to actual practices in some jurisdictions.

For example, double SPC schemes described in the proposed rules are not

the norm in some countries and regions like Japan. In some cases, ABCP conduits can include assets from other originators or sellers, which are different from those at the time of the origination. Also, ABCP conduits without an intermediate SPV may have to be restructured in order to comply with the proposed rules. Furthermore, we do not believe that eligibility criteria 2) and 3) above are relevant to the intent of the proposed rules requiring continuous interest. We therefore feel that the criteria for eligible ABCP conduits should be revisited.

At a minimum, we feel that eligibility criteria 2) and 3) above regarding intermediate SPVs should allow exemption for ABCP conduits outside the U.S.

(c) Disclosure of names regarding ABCP conduits and/or originator/seller should be avoided (pages 41-42)

The proposed rules would require the disclosure of information including the names of the originator/seller to the ABCP conduit.

However, the original creditor (the creditor of receivables, etc.), or the originator/seller, of the ABCP would not expect its own name is disclosed, and the proposed rules could negatively impact transactions in the ABCP market outside the U.S.

At a minimum, we seek a provision that does not require the disclosure of the names of originators/sellers for fully-supported ABCP conduits.

(2) Definition of securitizer (sponsor or originator) that necessitates credit risk retention requirement should be clarified (pages 17-21)

The definition of securitizer which would necessitate credit risk retention requirements may not be clear as reflected in actual transactions. We would like the proposed rules to clarify that the parties listed below are not included in the definition of securitizer in order to reflect the intent of the rules:

- (a) Agents (also called arrangers, advisors, or structurers) that participate in the securitization transaction without holding the underlying assets on their own books, when a third party's assets are securitized.
- (b) Underwriting sales agents (also called underwriters or distributors) that sell securitized assets, which are originated and temporarily held

by such agents on their own books, to investors.

(3) Flexibility in credit risk retention methods should be ensured (Request for Comment 13-23, pages 25-26)

The proposed rules describe a number of options regarding credit risk retention methods, including horizontal risk retention and vertical risk retention. If the intent of the credit risk retention requirement rules is to prevent moral hazard by completely shifting credit risk to the outside, then we think that there should be flexibility in allowing a choice of method of credit risk retention.

2. Exemption criteria for overseas transactions

Exemption criteria for overseas transactions should be applied based on the time of origination (pages 109-110)

The proposed rules propose *no more than 10 percent of the dollar value* sold in the securitization transaction that are sold to U.S. persons as criteria for overseas-related transactions exempted from the rules. However, it is in practice difficult to update current holders after origination. We would like to request clarification that it is sufficient to fulfill the exemption criteria at the time of origination stage only, which would be consistent with the intent of the proposed rules.

Respectfully submitted,

Japanese Bankers Association