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Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street, SW
Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219
Docket Number OCC-2013-0010

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn.: Elizabeth M. Murphy, Secretary
File Number S7-14-11

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn.: Robert deV. Frierson, Secretary
Docket No. R-1411

Federal Housing Finance Agency
Constitution Center, (OGC) Eighth Floor
400 7th Street, SW
Washington, DC 20024
Attn.: Alfred M. Pollard, General Counsel
Comments/RIN 2590-AA43

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn.: Comments, Robert E. Feldman,
Executive Secretary
RIN 3064-AD74

Department of Housing and Urban Development
Office of General Counsel
Regulations Division
451 7th Street, SW
Room 10276
Washington, DC 20410-0500
RIN 2501-AD53

Dear Ladies and Gentlemen:

RE: **CREDIT RISK RETENTION RE-PROPOSAL**

The Australian Securitisation Forum (the "**AuSF**")[1] thanks the Office of the Comptroller of the Currency ("**OCC**"), the Board of Governors of the Federal Reserve System ("**FRB**"), the

[1] Formed in 1989, the AuSF is the industry body representing Australian securitisation market participants. The AuSF's members act as issuers, dealers, investors, servicers, trustees, auditors and professional advisors working on securitisation transactions.

Federal Deposit Insurance Corporation ("**FDIC**"), U.S. Securities and Exchange Commission ("**Commission**"), the Federal Housing Finance Agency ("**FHFA**") and the Department of Housing and Urban Development ("**HUD**") (collectively, the "**Agencies**") for the revisions to and the opportunity to comment on the Notice of Proposed Rulemaking published in the Federal Register on September 20, 2013 ("**Re-Proposal**")[2] regarding credit risk retention.

The comments expressed in this letter represent the views of the members of a subcommittee of the AuSF, who have been chosen to review the Re-Proposal and determine the possible effects of the Re-Proposal on Australian issuers issuing asset-backed securities ("**ABS**"), with a particular focus on residential mortgage-backed securities ("**RMBS**") in United States markets. We have also received advice from our outside United States counsel, Mayer Brown LLP. In this letter, we have limited our comments to those issues that we believe would have a unique and negative impact on Australian RMBS, noting that the AuSF otherwise commends the Agencies for taking a leading role in relation to the review of, and proposed improvements to, the U.S. securitisation market. To that end, the AuSF suggests several modifications to the implementation of the Re-Proposal in order to avoid negative effects on Australian RMBS. In particular, we would like to highlight certain technical differences between U.S. and Australian mortgage regulations as well as emphasize the strong performance of Australian RMBS.

Members of the AuSF appreciate the improvements the Agencies made in response to comments received on the originally proposed risk retention rule. Particularly, the AuSF supports the inclusion of the qualified mortgage ("**QM**") criteria in the definition of qualified

[2] Terms that have been defined in the Re-Proposal or the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("**Dodd-Frank Act**") are used in this letter with the same meanings, unless otherwise specified.

residential mortgage ("**QRM**"). Due to certain technical differences between the U.S. and Australian mortgage regulations, however, the Australian RMBS market will not benefit from these improvements to the same extent as the U.S. RMBS market. Certainly the Agencies' intent in making these improvements was to benefit the RMBS market as a whole for transactions issued into the U.S., thereby affording equal treatment to Australian RMBS. As such, Australian securitisers should receive the same benefits of the revised QRM rules. To accomplish this, the AuSF requests that the Agencies grant a specified Agency, the SEC for example, the authority to deem Australian housing loans to be in "compliance" with QRM rules despite certain technical differences. We are not asking for changes to the rule itself to accommodate Australian issuers, but rather we are asking that the Agencies grant an Agency discretion in considering whether QRM rules are satisfied in a modified manner that is consistent with both the U.S. and Australian mortgage rules and regulations.

The QRM rules were drafted with the U.S. market in mind. As such, certain technical requirements of the QRM rule are inapplicable to Australian RMBS. Rather than impose a barrier to the U.S. market based on technicalities that are specific to unique aspects of the U.S. market but inapplicable to the Australian market, an Agency should be granted authority to permit foreign RMBS sponsors to meet the requirements of the QRM rules in an adjusted manner. Our intent is to comply with the QRM rules to the extent applicable, but to the extent that the U.S. requirements are not applicable, Australian securitisers would meet those requirements with comparable Australian equivalents. This would achieve the mutual goal of complying with the Re-Proposal while also allowing high quality Australian sponsors access to the U.S. market. The following are some specific examples of the technical disparities between the QRM definition requirements and current Australian regulatory requirements:

(a) *Consideration and verification of the consumer's income and assets.* The standards for making this determination are based on U.S. concepts that are not strictly applicable in Australia. Australian equivalents substantially similar to the U.S. requirements exist, but as currently proposed, Australian securitisers would not technically meet the Re-Proposal's requirements. By way of example, the QRM references Internal Revenue Service ("**IRS**") form W-2, verification of retirement and federal tax forms, none of which technically exist in Australia. The National Consumer Credit Protection Act "(**NCCP**"), however, already regulates income and asset verification and ability to repay standards in Australia in a manner applicable to Australian consumers with the NCCP and regulations supported by a specific Regulatory Guide from the Australian regulator, which has also been developed specifically for use in Australia. Certainly, the Australian housing market cannot be expected to use U.S.-specific forms to issue Australian RMBS into the U.S. when Australian forms and regulations achieve the same goal.

(b) *Payments underwritten using the maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment is due.* This requirement is intended to address abuses in the U.S. market caused by "teaser rate" or "honeymoon rate" loans that put some U.S. consumers into loan products that they could not afford. This practice is not significant in the Australian market, and there is no requirement that loans are subject to a maximum interest rate for the first 5 years (indeed, for variable rate loans, it may not be possible to fix such a rate). However, the Australian Regulatory Guide on capacity assessment under the NCCP's ability to repay rules makes it clear that the regulator expects underwriters to take account of how vulnerable consumers are to an increase in interest rates (such as on a typical variable rate loan), or the impact in the event that a teaser rate or a

honeymoon rate period is offered. Given the range of loan types and circumstances, that regulatory guidance does not set out a formula or other specific requirement as to how credit providers should take account of interest rate increases in their capacity calculations. Underwriting systems are currently calibrated to comply with the NCCP's ability to repay rules, which are similar to the Consumer Financial Protection Bureau's ("**CFPB**") QM rules in purpose and scope. They reflect the flexibility from the Australian regulator to deal with this issue in a way which is appropriate for the particular loan type under consideration. Therefore, requiring this form of underwriting would be an artificial requirement in the Australian market, require time consuming and expensive modifications to underwriting models and in the end would not produce the intended result that it provides in the U.S.

It would be wrong to exclude Australian RMBS from the U.S. market because of these technical requirements that do not go to the purpose of the Re-Proposal but rather go merely to local law- and practice-related inconsistencies between U.S. and Australian regulations, particularly given the strong performance of Australian RMBS transactions. The unique structure of Australian RMBS and strong performance of Australian RMBS securitisations warrant specifically-tailored relief from certain requirements under the Re-Proposal. As noted in our comment letter on the originally proposed credit risk retention rules, Australian RMBS transactions have performed well in comparison to other global securitisation markets. Both arrears and delinquencies levels have been lower than those in the U.S. and Western Europe during the financial crisis as well as during the recovery. Both the Australian origination model and the structure of a typical Australian mortgage loan have contributed to this strong performance, as has the current robust regulatory environment in Australia. To illustrate the strong Australian RMBS performance, we refer you to the charts set forth on Appendix A.

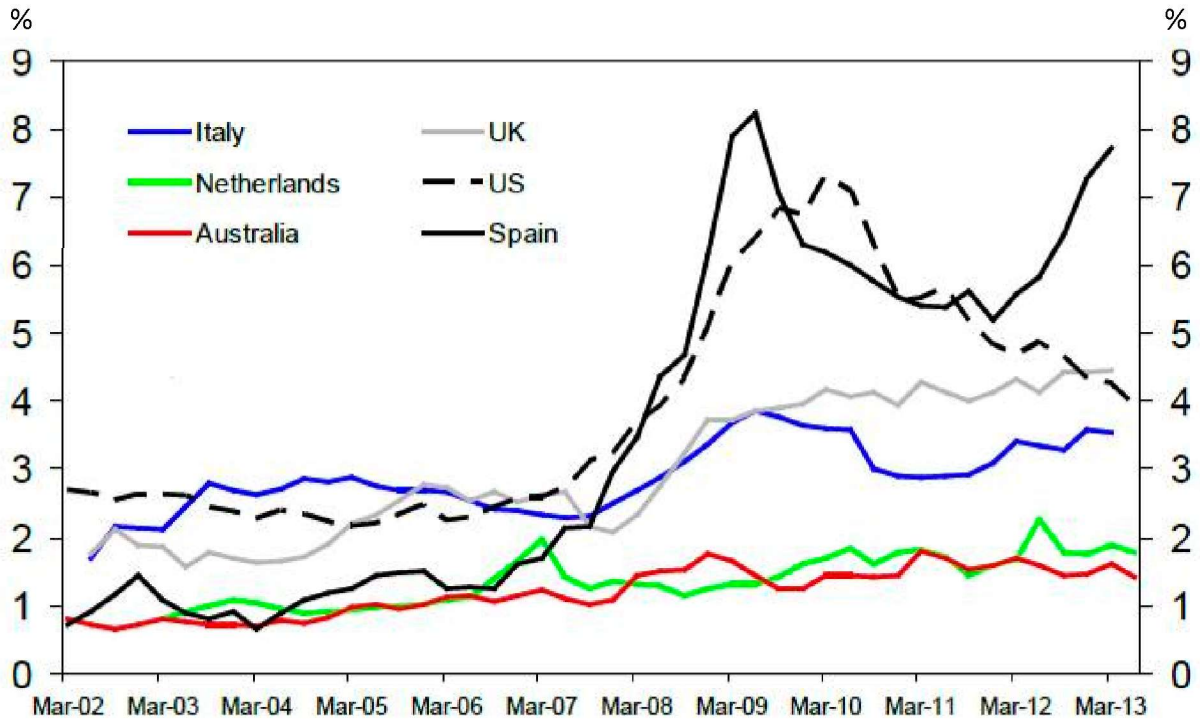
In conclusion, the U.S. securitisation market plays a crucial role for Australian securitisers. Similarly, U.S. investors benefit from investment opportunities in high quality Australian RMBS. While we support the Agencies' efforts to regulate this important industry, we request that the Agencies' grant the SEC the authority to determine whether Australian housing loans are in compliance with the QRM requirements despite certain technical and local law driven inconsistencies. We make this request so that high quality Australian RMBS securitisers can comply with the QRM rules and continue to access the U.S. securitization markets and also so that high quality Australian RMBS investments are available to U.S. investors. We trust that our comments are helpful to the Agencies. Given the importance of the Untied States market to our members, our outside United States counsel is happy to discuss these matters in more detail and to respond to any questions you may have.

Respectfully submitted,

CHRIS DALTON
Chief Executive Officer

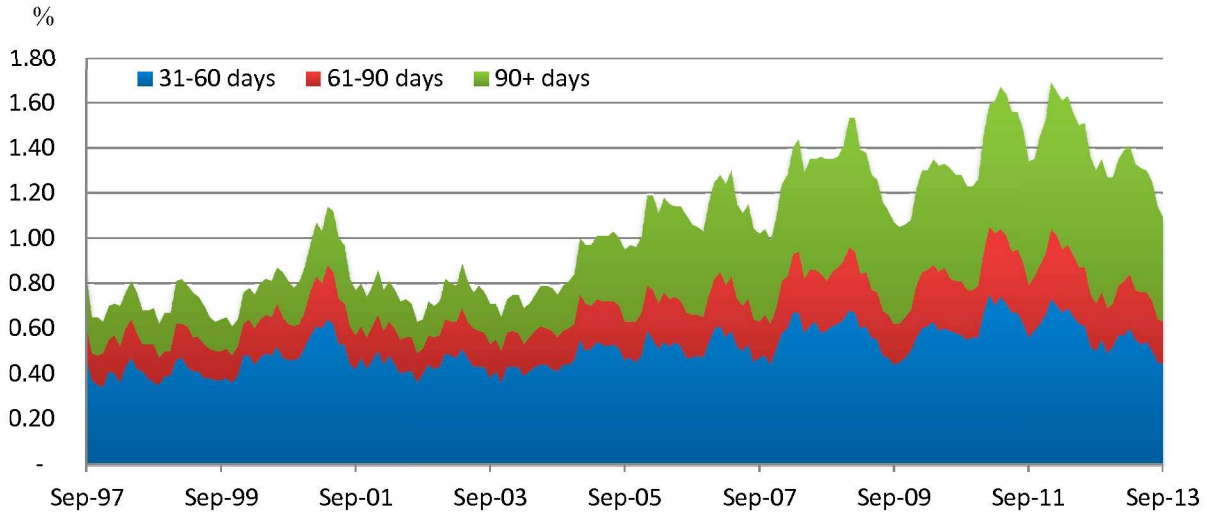
APPENDIX A

Figure 1 – Selected International Arrears



Sources: Standard & Poor's, Westpac Research and Bloomberg

Figure 2 – RMBS Delinquencies



Source: Standard & Poor's Performance Index (SPIN) For Australian Prime RMBS