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VIA ELECTRONIC MAIL

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

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

Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Robert deV. Frierson, Secretary

Federal Housing Finance Agency
Eighth Floor
400 7th Street Street, NW
Washington, DC 20024
Attn.: Alfred M. Pollard, General Counsel

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

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

Re: Credit Risk Retention: Comments on Proposed Rules Relating to Finance Subsidiaries

SEC (Release No. 34-64603; File No. S7-14-11); FDIC (RIN 3064-AD74); OCC (Docket Number OCC-2013-0010); FRB (Docket No. R-1411); FHFA (RIN 2590-AA43); HUD (RIN 2501-AD53)

Ladies and Gentlemen:

We are writing to you to propose a specific interpretation of the definition of “asset-backed security” under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “**Dodd-Frank Act**”) which would (1) more clearly accommodate finance subsidiaries under Rule 3a-5 of the Investment Company Act and (2) exclude certain securities that are collateralized by one or more financial assets but are essentially the corporate or governmental credit risk of a common enterprise.

The Dodd-Frank Act’s definition of asset-backed security carves out issuances made by a finance subsidiary, but the language is drafted in such a manner that it effectively eliminates the usefulness of the

carve-out. In addition, we believe that - with appropriate protection - there is merit to carving out from the definition security issuances which represent a single corporate family or governmental credit risk.

An asset-backed security as defined under the Dodd-Frank Act:

(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

(i) a collateralized mortgage obligation;

(ii) a collateralized debt obligation;

(iii) a collateralized bond obligation;

(iv) a collateralized debt obligation of asset-backed securities;

(v) a collateralized debt obligation of collateralized debt obligations; and

(vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

1. Finance Subsidiaries.

Generally speaking, a financing subsidiary is a subsidiary of an operating company or a holding company (the “**Parent Company**”) that issues debt or preferred equity securities to the market and provides the proceeds of the issuance to one or more related companies for use in the operations of the entire enterprise. Typically, as a matter of corporate and other law, the finance subsidiary will deliver the cash proceeds of the issuance for use by the Parent Company's enterprise by loan to the Parent Company and/or other subsidiaries of the Parent Company.

When a finance subsidiary loans the proceeds of an offering to the Parent Company or other subsidiaries of the Parent Company, the security issued by the finance subsidiary to the market would likely be considered an asset-backed security under Clause (A) of the definition, particularly when the security is not guaranteed by the Parent Company.¹ The intercompany loans are self-liquidating financial assets and the repayment of the finance subsidiary's securities is primarily dependent upon the cash flows from those intercompany loans. Unfortunately, the language in Clause (B) would not exclude the security

¹ Rule 3a—5(a)(1) requires that debt securities issued to the public by a financing subsidiary be unconditionally guaranteed by the parent company. Guidance from the Securities Exchange Commission has confirmed that the guarantees are not necessary in certain private offerings. With the guarantee, one could conclude that the securities issued by a financing subsidiary are not primarily dependent upon the cash flow from intercompany loans. Without the guarantee, the same conclusion is not easily reached.

because the final clause requires that “none of the securities issued by the finance subsidiary [to be] held by an entity that is not controlled by the parent company.”

We believe the wording in the final provision of Clause (B) is in error because it is over-broad. We believe an easy fix to the issue is to interpret the final clause to say “none of the [common equity] securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.” If there is concern that the proposed modification would allow for structures to evade the purpose of the risk retention regime, we would suggest adding clarification language to the effect that the securities referred to in clause (B) will be considered the “common equity securities” for those offerings where the facts and circumstances indicate that investors were relying upon the corporate credit of the Parent Company’s enterprise.

2. Back-to-Back Issuances.

Similar to financing subsidiaries, certain offerings of a single corporate or governmental credit may be issued into the United States in a “back-to-back” structure, which would likely be caught within the definition of an asset-backed security. In a typical structure, a bankruptcy remote orphan entity or a special purpose subsidiary may issue debt to the market and loan those proceeds to one corporate enterprise or foreign governmental entity. The reasons for these back-to-back issuances vary, but may include tax efficiency.²

We believe that these back-to-back issuances are typically designed for investors to look through the orphan or subsidiary entity for repayment and rely upon the corporate or governmental credit of the back-to-back loan borrower. Thus, while the investors are not looking to the corporate credit of the orphan or subsidiary entity for repayment, investors in the securities issued by the orphan or subsidiary entity ultimately do depend primarily upon the repayment of the loan made by the orphan or subsidiary entity to the corporate or governmental entity.

We would suggest a rule that clarifies that a security issued in a back-to-back structure does not depend *primarily* upon the cash flows from one or more financial assets where both (1) there is a single corporate or governmental enterprise³ obligated on the back-to-back loan or indebtedness, (2) the facts and circumstances indicate that investors were relying upon the corporate or governmental credit of the single back-to-back obligor and (3) the transaction is not designed to evade the purposes of risk retention provisions included in the Dodd-Frank Act. A clearer statement of purpose – e.g., limiting the risks from the pooling of multiple credits from different obligors and transferring that risk to the capital markets – might be included to provide some clarity, as the Dodd-Frank Act is monumental in scope.

Best regards,

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² Some of the offerings have been by sovereign states whose laws provide for no withholding tax on loans made to the obligor, but do not adequately address the issuance of securities by obligor.

³ We use the word enterprise to avoid being caught up whether there is one obligor or multiple obligors in the same corporate and/or governmental family supporting the credit. For corporate debt offerings, it is not uncommon to have both either multiple obligors or guarantors of the debt.