| asset management group

October 30, 2013

Department of the Treasury
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
RIN 1557-AD40

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn.: Elizabeth M. Murphy, Secretary
File Number S7-14-11
RIN 3235-AK96

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
RIN 7100-AD70

Federal Housing Finance Agency
Constitution Center, (OGC) Eighth Floor
400 7th Street SW
Washington, DC 20024
Attn.: Alfred M. Pollard, General Counsel
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
Regulations Division
Office of General Counsel
451 7th Street, SW, Room 10276
Washington, DC 20410-0500
RIN 2501-AD53

RE: Credit Risk Retention Proposed Rule

Dear Sir or Madam:

The Asset Management Group (AMG) of the Securities Industry and Financial Markets Association (SIFMA)[1] appreciates the opportunity to provide comments on the reproposed rules regarding credit risk retention (the 2013 Proposal) that were issued by the Securities and

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that strengthen markets and encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. This letter has been prepared by the Asset Management Group (the AMG) of SIFMA, the voice for the buy side within the securities industry and the broader financial markets. Collectively, the members of the AMG represent over $20 trillion of assets under management. The clients of AMG member firms include, among others, registered investment companies, state and local government pension funds, universities, 401(k) plans, and similar types of retirement funds and private funds, such as hedge funds and private equity funds. SIFMA's dealer, sponsor, and issuer members have submitted comments in a separate letter.

Exchange Commission, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, and the Department of Housing and Urban Development (the Agencies) and published in the Federal Register on September 20, 2013. The 2013 Proposal revises the proposed rules previously published by the Agencies on April 29, 2011 (the 2011 Proposal). Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) requires the Agencies to prescribe regulations to require a securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party. The regulations must require the retention of at least 5% of the credit risk for assets other than those subject to an exemption or exception.

American and global securitization market participants are eager to engage in a vibrant, reinvigorated private securitization market that is a viable alternative or supplement to the government-guaranteed securitization market. We believe that the governing principle underlying both the 2011 and 2013 Proposals—the alignment of economic interests between asset securitizers and investors through risk retention—is a critical step to the robust return of the private securitization market.

Since the financial crisis, SIFMA's AMG has been in regular contact with policymakers – those in Congress, within the Treasury Department, and at other financial regulatory agencies – providing important input to help define the future infrastructure of mortgage and asset-backed finance. We provided feedback on the 2011 Proposal, and, together with our member firms and outside advisors, have reviewed the 2013 Proposal. We appreciate this opportunity to provide the Agencies with additional comments reflecting the feedback of our member firms and our thoughts on the Proposed Rules.

I. RMBS

A. Exemption for Qualified Residential Mortgages

Most significantly for the RMBS market, the Agencies have decided to generally define a "qualified residential mortgage" (or "QRM") as a mortgage meeting the requirements of a "qualified mortgage" (or "QM") as set forth as part of the CFPB's Ability to Repay rule (and any amendments thereto). AMG supports the Agencies' decision in the Proposed Rules to align QRM with QM. While we recognize that the lack of down payment requirements for mortgage borrowers may increase the risk of default in loan pools, we believe that the Agencies have reasonably determined that the QM standards will require originators to better consider the ability of borrowers to repay their mortgages, and will prevent the recurrence of unsound originations of mortgages having more risky features, such as negative amortization or interest-only provisions. We agree with the Agencies that the ability to repay rules, and the construction of the QM standard, will significantly improve the quality of mortgage underwriting, through the operation of the rules themselves, and also due to the legal risk faced by originators should they originate loans that do not appropriately consider a borrower's ability to repay. At the same time, the alignment of QRM with QM will encourage the revitalization of the private-label RMBS market by creating a consistent standard for mortgage underwriting and securitization,

thereby preserving credit access for home buyers, and protecting and expanding the renewal of the U.S. housing market.

For similar reasons, AMG does not support the concept of "QM-plus" as an alternative approach for exempting RMBS issuances from the risk retention requirements. The QM-plus approach would create a standard that would be far more restrictive than what was proposed in 2011, and combined with the limitation that securitized pools cannot blend mortgage loans that are exempted from risk retention requirements and those that are not, would create the most restrictive lending environment possible, and further depress the recovery of private label securitization markets by further tipping the economics towards the retention of loans in portfolio by lenders. We believe that uniformity in the overall regulatory framework for residential mortgage lending is a valuable goal—one that will provide all market participants with clarity. In addition, although the final QM rule did not fully reflect all of the RMBS investment community's concerns, we believe that RMBS investors have gained a level of understanding and familiarity with the CFPB's definition of QM that would be disrupted if the Agencies were to establish a new and different standard for QRM.[2]

B. Hedging and Transfer Sunset Provisions for RMBS

Certain AMG member firms have voiced concern that the required period for risk retention in RMBS transactions is too long. As proposed, for securitizations where all securitized assets are residential mortgages, the prohibitions on transfer or sale and hedging would expire beginning five years after the date of closing, if and when the total unpaid principal balance of the residential mortgages collateralizing the securitization has been reduced to 25% of the unpaid principal balance at closing, but in all cases no later than seven years after the closing date. However, based on the typical amortization schedule of residential mortgages, this effectively results in a seven-year restriction on hedging or transfers. AMG believes that a shorter hedging/transfer restriction period is appropriate in light of the requirements of the ability-to-repay rules that are applicable to all originations and, in particular, due to the stricter underwriting guidelines that lenders will face (*e.g.*, ARMs will not be underwritten at a teaser rate or with disregard for negative amortization). Accordingly, underwriting defects will tend to be borne out in the first five years of a mortgage term, making a shorter sunset period appropriate.

II. COLLATERALIZED LOAN OBLIGATIONS (CLOS).

A. Alternative forms of Credit Risk Retention for CLO Managers

AMG agrees, in part, with comments to the 2011 Proposal, that in light of the unique structure of CLOs (lack of "originate-to-distribute"), it is not appropriate to impose credit risk retention requirements that are similar to those imposed on RMBS or CMBS transactions. Nevertheless, we do believe that some level of credit risk retention by CLO managers is appropriate as long as it balances (i) the goals of aligning the incentives of sponsors of asset backed securities with those of investors as intended by Section 941 of the Act with (ii) the

[2] We note that there is significant investor discomfort with the potential for assignee liability resulting from violations of the QM safe harbor; the full impact of this on the market will be borne out over time.

preservation of a robust and competitive market in CLOs which are an important asset in the diversification of an investor's portfolio.

Very few CLO managers will be able to comply with the 2013 Proposal's credit risk retention requirements due to either their inability to self-fund retaining the required risk retention percentage or the lack of available non-recourse funding from third parties as was raised in the July 29, 2013 letter submitted by the Loan Syndications and Trading Association (the LSTA). This is concerning because investors will effectively lose their traditional and important contractual right to remove a CLO manager from a poorly performing transaction if there are no eligible CLO managers available to act as a replacement. A decrease in the vitality of CLO markets will also adversely affect the ability of third party lenders, for whom CLOs provide a significant source of liquidity, to provide financing to both large and medium sized US borrowers. As a consequence, there will be a substantial reduction in the competitiveness of available CLOs in which investors can choose to invest.

AMG therefore supports the alternative forms of credit risk retention proposed in the comment letter of the LSTA dated October 31, 2013.

AMG agrees with the LSTA and other commenters that the management and incentive fees that CLO managers receive in connection with each transaction are material and provide a significant incentive (similar to the fees paid to a manager of a mutual fund) to CLO managers to ensure that the CLO performs well. AMG appreciates that the Agencies have already considered the subordination of fees, but, in light of the shortcomings discussed above and the shortcomings in relation to the Open market CLO risk retention alternative we will discuss below, AMG respectfully recommends that the Agencies reconsider permitting the escrowing or subordination of such fees in combination with other forms of acceptable risk retention, such as the purchase of an equity position, as an alternative for CLO managers to satisfy the applicable credit risk retention rules.

B. Open Market CLOs

In the context of providing CLO managers with additional methods of satisfying their credit risk retention requirements, we appreciate the Agencies' efforts in crafting an alternative for CLO managers. However, the proposed alternative for "Open market CLOs" will be difficult to implement in practice. In particular, we believe that few loans will satisfy the definition of "CLO eligible loan tranche." Lead arrangers would be required to include various representations in the credit agreement that are not presently market practice and it will take time, if at all accepted by lead arrangers, for them to be incorporated into a material number of credit agreements. In addition, eligibility for CLO loan tranches requires that the lead arranger of a particular loan retain at least 20% of such loan's aggregate principal balance at origination as well as 5% of the tranche of such loan (to be used in the applicable CLO) for the life of such loan. Lead arrangers will have to hold significantly more loans on their balance sheet and will have to allocate significantly more regulatory capital to account for their larger balance sheet of loans. We expect that many lead arrangers will therefore be resistant to accepting such terms and will not originate such loans.

If the Agencies proceed with this concept of "CLO eligible" tranches, we would recommend that a qualifying Open market CLO be permitted to hold a percentage of non-CLO eligible loan tranches for a phase-in period while the markets adjust to the new standards.

C. Definition of Qualified Commercial Loans

The Proposal included a definition of Qualified Commercial Loans which are exempt from the risk retention requirements. This definition is similar to the one proposed in the 2011 Proposal other than a few amendments. AMG supports the recommendations made by the LSTA to replace Qualified Commercial Loans with an alternative concept of a high quality loan. In particular, AMG would recommend that the definition provide for a maximum amortization period of greater than 5 years since many commercial loans are offered on terms of 15 to 20 years. These recommendations would expand the pool of eligible commercial loans, and thus available CLOs for investment, while only adding an incremental, but acceptable, level of risk to our member firms.

III. CMBS

With respect to CMBS transactions, the 2013 Proposal permits risk retention of a first-loss position to be acquired and held by a third-party purchaser in a transaction that meets certain qualifications, including a re-underwriting of each commercial mortgage loan included in the securitized pool. AMG supports this option for CMBS transactions and believes that it increases investment opportunities for our member firms and their clients for commercial mortgage loans. We also believe, however, that the 2013 Proposal can be modified in some respects to better address the needs of investors in this market.

A. Role of Operating Advisor

Under the third-party purchaser option for CMBS risk retention, the 2013 Proposal would require the appointment of an independent Operating Advisor, who would be charged with acting in the best interests and for the benefit of investors as a collective whole. The Operating Advisor must review the actions and reports of the special servicer, and must have the authority to recommend replacement of the special servicer upon breach of the applicable servicing standards, if such replacement would be in the best interests of the investors as a collective whole.

While the AMG supports these Operating Advisor requirements, we question the additional requirement that, once the eligible horizontal residual interest is reduced to 25% or less of its initial principal balance, the Operating Advisor gain additional consultation rights with respect to special servicing actions. If the goal of the Agencies in requiring an Operating Advisor is to address the potential conflicts of interest that can arise when the third-party purchaser exercises its "controlling class" rights with respect to appointment and control of the special servicer, then such a goal is not met if the Operating Advisor gains such consultation rights only after the third-party purchaser has lost its controlling rights (which typically occurs at the same 25% threshold in standard conduit CMBS transactions). Conversely, requiring an Operating Advisor in any situation where the initial holder of risk retention has been reduced to below its control threshold (or written down entirely) seems unconnected to any goal of requiring

risk retention by the sponsor or qualified third-party purchaser. As proposed, the consultation rights of the Operating Advisor seem to relieve the risk retention holder of consulting with a representative of the senior investors, while imposing stricter consultation requirements on those same senior investors when they inherit the control rights due to losses on the underlying pool.

As proposed, the Operating Advisor already has the authority to review the actions and performance of the special servicer and recommend removal and replacement by an affirmative majority of all investors voting on the matter. Accordingly, we suggest that the consultation requirements of an Operating Advisor be eliminated in the final rules or, alternatively, such requirements be effective from the closing of a CMBS transaction until the risk retention holder loses control over special servicing.

B. Disclosure of B-Piece Purchase Price

The 2013 Proposal requires that, in any CMBS transaction where the third-party purchaser option is being used to satisfy risk retention, the sponsor must disclose to all investors the purchase price paid by the third-party purchaser for the eligible horizontal residual interest. We do not believe that such disclosure of pricing information serves any significantly useful function in achieving the underlying goals of risk retention. We note that the 2013 Proposal would require sponsors to disclose the key inputs and assumptions used in measuring the total fair value in all classes of the CMBS interests. Although AMG member firms include the full range of investors in CMBS tranches, from B-piece buyers to purchasers of AAA-rated classes, we do not believe that the goals of risk retention justify disclosure of what historically has been viewed and accepted by B-piece investors and other market participants (including sponsors, underwriters and senior investors) as highly confidential junior investor pricing information.

C. Use of Fair Value and Allocation of Risk Retention

Unlike the 2011 Proposal, the Agencies have proposed measuring the amount of risk retained as a percentage of fair value (determined in accordance with U.S. GAAP) as opposed to par value of the issued ABS interests. However, because the initial aggregate principal amount of CMBS issuances equal the aggregate outstanding principal amount of the commercial mortgage loans in the underlying pool, the B-pieces in CMBS transactions have historically been retained at par value and sold at a discount to par value. Hence, the move to fair value in the 2013 Proposal will push the amount of retained securities up the capital stack, reducing investment opportunities for AMG member firms that invest in mezzanine tranches of CMBS transactions. In addition, the forced creation of larger B-pieces could drive smaller investors from the market, due to the increased size of eligible horizontal interests that must be purchased.

Similarly, by potentially pushing the B-piece into investment-grade classes, the use of fair value will reduce the attractiveness of the B-piece to our member firms that desire to purchase below-investment grade subordinate classes bearing higher yields. This problem is compounded by the requirement that any split of the retained horizontal interest between two third-party purchasers be structured as *pari passu* interests. We believe that these restrictions on the third-party purchaser option will adversely affect the availability and liquidity of CMBS investments for our members.

Accordingly, we recommend that the Agencies expand the flexibility of CMBS sponsors and third-party purchasers in structuring risk retention. Specifically, we recommend that multiple B-piece buyers be allowed to retain the horizontal risk retention in multiple tranches that share the first-loss position sequentially, but otherwise meet the eligibility criteria of the proposed exception for third-party purchasers, including underwriting, sophistication and financial requirements. This approach would accommodate B-piece investors who may have different yield requirements but who otherwise are prepared to retain the below-investment grade risk of the CMBS issuance. Alternatively, we recommend that the number of permitted third-party purchasers be expanded to allow smaller B-piece investors to participate in holding the eligible horizontal interest, either by purchasing a *pari passu* interest in the B-piece itself, or by purchasing junior interests in particular mortgage loans (through the use of rake bonds or B notes) that such smaller investor has underwritten.

D. Sunset Provisions

The 2013 Proposal would allow the initial third-party purchaser of an eligible horizontal residual interest (or the sponsor that initially retained such interest) in a CMBS transaction to transfer such horizontal interest to a subsequent eligible third-party purchaser on or after five years from the date of closing. In establishing the five-year holding period, the Agencies have articulated their view that five years is the minimum length of time required to promote good underwriting practices by the initial third-party purchaser (or sponsor, as applicable).

AMG supports the implementation of some minimum holding period for third-party purchasers of eligible horizontal residual interests in CMBS transactions. However, because any subsequent third-party purchaser of the horizontal interest will be required to meet the same qualification requirements applicable to the initial third-party purchaser—most notably, the requirement that it re-underwrite all of the underlying assets in the CMBS pool—we believe that the minimum holding period should be significantly shorter. A shorter holding period will make initial investment in B-pieces more attractive and increase secondary market investment opportunities for AMG member firms and their clients, while still maintaining the protection against lax underwriting that is the primary goal of the risk retention requirements.

In addition, we believe that a CMBS sponsor that initially retains an eligible horizontal residual interest should be entitled to transfer that interest to a qualified third-party purchaser without any minimum holding period. We do not believe there is any reasonable justification for limiting the investment opportunities of B-piece buyers to acquire an eligible horizontal residual interest subsequent to closing if such B-piece buyers could have acquired such interest at closing in the first instance.

IV. OTHER ISSUES

A. Fair Value Calculation

The 2013 Proposal would require sponsors to measure their risk retention requirement using fair value, determined in accordance with U.S. GAAP. While we generally agree that fair value is a better measurement than par value for purposes of measuring risk retention (and the use of fair value eliminates the need for troublesome requirements, such as the formerly

proposed premium capture cash reserve account), there remain some aspects relating to the use of fair value that raise issues of concern to AMG members. As discussed above, the use of fair value in CMBS transactions will likely reduce the attractiveness and/or availability of investment opportunities in securitized commercial mortgage loans.

The 2013 Proposal requires that fair value be calculated as of the day on which the price of ABS sold to third party investors is determined. We note that pricing for different classes in a single ABS transaction may occur on different days. We urge the Agencies to clarify that the determination of fair value should be done for all ABS classes at a single time once a specified percentage threshold of ABS classes have priced.

We also note that the 2013 Proposal requires disclosure to investors of certain fair value information "a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction," including the sponsor's fair value methodology and all significant inputs used to measure its eligible residual interest. Although AMG members strongly support the disclosure of such fair value information, we must point out the inherent conflict between this pre-sale disclosure requirement and the rule that fair value be determined at the time of sale.

B. Resecuritizations

The Agencies proposed a narrow exemption from the risk retention requirements for resecuritizations of a single security involving the issuance of only a single passthrough class. AMG would recommend that this exemption be expanded to permit credit tranching in the context of resecuritizations of RMBS and CMBS, commonly called re-REMICs. Re-REMICs provide a valuable service for mortgage investors such as our AMG members to restructure interests that may no longer fit their investment guidelines or strategies, but that have been particularly valuable over the last five years. We believe that the imposition of risk retention requirements on securitizers of re-REMICs will have the effect of making securitizers less willing to undertake this activity to the disadvantage of many investors, or increase its costs significantly, thereby curtailing investor choice and flexibility.

It is important to note that these typical re-REMIC resecuritizations are not originate-to-distribute transactions; they do not change the net level of risk, they simply redirect cashflows that would have occurred in any case. They also cannot, by definition, impact the quality of the underwriting of the collateral supporting the securities, given that they are purely secondary market transactions. A typical resecuritization would involve the retranching of a senior bond to create a new senior and a new junior interest; this serves to increase the loss-absorbing support for the senior tranche, may allow for a ratings upgrade on the new senior bond compared to the original one, and allows the holder to dispose of the junior, loss-absorbing piece, to another party who desires to hold it. Alternatively, the holder may only desire to hold the junior portion. In either case, these transactions are often done at the request of holders of RMBS, or may be a condition of sale of an existing RMBS tranche in a secondary market transaction. To the extent risk retention requirements make them less available, holders of RMBS will be negatively impacted. We do not believe that the intention of section 941 of Dodd-Frank was to reduce investor choice. As stated by the Agencies in the Proposal, the intent was to "provide securitizers an incentive to monitor and ensure the quality of the assets underlying a

securitization transaction, and, thus help align the interests of the securitizer with the interests of the investors."

In addition, while AMG generally supports that to qualify for the resecuritization exemption, a transaction must be collateralized solely by existing ABS issued in a securitization transaction for which credit risk was retained or which was exempted from the credit risk retention requirements (*i.e*., RMBS collateralized by QM pools), AMG is concerned about the impact this will have on the ability to resecuritize historical RMBS and CMBS transactions.

Therefore, AMG, further respectfully requests that the Agencies reconsider permitting an exemption from the risk retention requirements for a resecuritization of historical RMBS or CMBS bonds (bonds issued prior to the effective date of any final risk retention rule). Resecuritizations of historical RMBS and CMBS should be permitted to issue a single class of security or multiple classes of securities depending on the investor's goals. As discussed above, re-REMICS are not originate-to-distribute transactions. A re-REMIC of historical RMBS or CMBS bonds will not present any concerns regarding misalignment of interests between a securitizer and the investors since typically an investor that is already holding a bond is the one that requests a dealer to resecuritize that bond. AMG members also value the liquidity and options that an active secondary market offers them.

AMG believes, however, that no exemption is appropriate for securities backed by managed pools of assets. A resecuritization exemption should not be available to such holders of such securities in order to allay concerns that an exemption could be used to revive complex resecuritizations such as certain CDOs and CDOs-squared.

C. Prohibition Against Hedging

AMG supports the 2013 Proposal's implementation of the Dodd Frank Act's prohibition against a securitizer hedging its retained risk (subject to the comments above regarding the length of the restrictions applicable to RMBS and CMBS). We believe the Proposal appropriately reflects the intention of Congress that the securitizer must not be allowed to purchase or sell securities or other financial instruments, or enter into separate insurance or other agreements, if payments on those instruments or agreements are materially related to the credit risk of one or more particular interests that the securitizer is required to retain, or if the instrument or agreement in any way reduces or limits the securitizer's financial exposure to that risk. AMG agrees that securitizers may, however, purchase positions in nonrelated assets tied to overall market movements, such as movements of general market interest rates, currency exchange rates, home prices, or of the overall value of a particular broad category of asset-backed securities.

V. CONCLUSION

We appreciate the extraordinary effort and thoughtfulness with which the Agencies have approached the 2013 Proposal. This is a very complicated subject, and the introduction of risk retention into the securitization marketplace essentially is a new paradigm as to which we only can speculate on the market consequences. While we support many of the modifications the

Agencies have made to the 2011 Proposal, we believe there are important issues that remain to be addressed.

Please do not hesitate to contact Timothy Cameron at 202-962-7447 or tcameron@sifma.org or Christopher Killian at 212-313-1126 or ckillian@sifma.org with any questions or for more information.

Sincerely,

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