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August 1, 2011

VIA ELECTRONIC MAIL (rule-commentsgsec.gov)

Department of the Treasury
Office of the Comptroller of the Currency
250 E Street, SW., Mail Stop 2-3
Washington, DC 20219
Docket Number OCC-2011-0002
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: Jennifer J. Johnson, Secretary
Docket No. 2011-1411
RIN 7100-AD-70

Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
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: Comments on Credit Risk Retention

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is pleased to respond to the request for comment by the Department of the Treasury, Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission ("Commission"), and the

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, please visit www.sifma.org.

Federal Housing Finance Agency and the Department of Housing and Urban Development on the jointly-proposed rules to implement the requirements of section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, (the "Dodd-Frank Act"), which is codified as new Section 15G of the Securities Exchange Act of 1934, as amended.

SIFMA has previously submitted a response to many aspects of the risk retention rules. This separate response relates to a specific type of transactions that we believe should be exempted from the proposed rules.

We request that the risk retention rules exempt from their scope any transaction involving a repackaging of municipal obligations (including, for example, bonds, loans, leases, installment sale agreements and similar instruments involving municipal credit) into a structure commonly known as a "tender option bond." Tender option bonds (described below) are essentially a repackaging of long term municipal obligations into a money market eligible class of floating rate securities (the "floaters"), which may be tendered at par plus accrued interest, and an inverse of the floating rate security (the "inverse").

I. Description of tender option bonds

Tender option bonds involve the creation of a trust which holds municipal obligations (typically a single series of a highly rated municipal bond), and the issuance by the trust of two classes of certificates. One class distributes interest based on a floating rate (the "floaters"); the other class distributes interest based on the inverse of the floating rate security (the "inverse"). The holders of the floaters have the right to tender their floaters for purchase at par plus accrued interest, and the payment of the tender price is supported by a liquidity facility delivered by a highly rated provider and causes the floaters to be a short-term security. The floaters therefore have a significant level of protection in addition to the underlying municipal asset held in the trust. The floaters are sold to short-term investors such as tax-exempt money market funds, and the inverse are sold to longer-term investors, such as a bank, insurance company, mutual fund, or hedge fund, seeking exposure to the municipal bond which it identifies for deposit in the trust. Tender option bonds simply convert a long-term municipal bond into a short-term, money market eligible security.

The floaters in a tender option bond are rated based on the rating of the underlying municipal asset held by the trust and the rating of the provider of the tender option. The inverse, if rated, is generally rated the same as the rating of the underlying municipal obligation. The ratings of the securities issued are not based on structural features of the transaction. Further, as only two classes of securities are issued by the trust, there is no tranching of credit risk. The risks borne by both the floater holder and the inverse holder are the risks associated with investing in the municipal obligations, except that the floater holder's risk is reduced due to the tender right available to the floater holder. The credit and price risk on the underlying municipal bonds as well as the creditworthiness of the liquidity provider, is completely transparent to the buyers of the floater and inverse certificates.

II. Request for expanded exemption

Currently an exemption from the risk retention requirements is proposed for any asset-backed security that is a security issued or guaranteed by any state of the United States, by any political subdivision of a state or territory or by any public instrumentality of a state or territory that is exempt from the registration requirements of the Securities Act. (See, Proposed Section __.21(a)(3)). We support this exemption and thank the Commission for proposing it. We, together with other groups representing state and local governments and agencies, wrote last year to congressional leaders asking that municipal securities be exempted from the definition of asset-backed securities during legislative consideration, and are grateful that the exemption you propose would have largely the same effect. We urge the Commission to expand this provision to provide an exemption from the risk retention requirements for any transaction that is collateralized by a security that is, or securities that are, of the same type described in Section __.21(a)(3), which transaction results in the issuance of a money market eligible class of securities as is the case with tender option bonds.

III. Reasons for requesting the expanded exemption

(i) Tender option bonds are not the type of transactions that prompted Congress to enact Section 15G. Most participants in the tender option bonds market do not consider municipal repackaging transactions to be "securitizations." This point was made by several market participants in August, 2010 in response to the Commission's proposed rule with respect to asset-backed securities, including the revision of Regulation AB under the Securities Act and the Exchange Act. See our comment letter as well as the comment letters from the Investment Company Institute, JPMorgan Chase & Co., State Street Bank and Trust Company, and Bank of America. Tender option bonds are not considered securitizations by participants in this market because these transactions do not involve features common to securitizations such as a third party servicer, an asset manager, a repurchase obligation by the transferor, or a tranching of the municipal securities into a hierarchy of risk participations.

An additional reason why tender option bonds are not considered securitizations is because the vast majority of tender option bonds typically involve municipal bonds for which a complete offering document is prepared and made publicly available. The issuance and subsequent repackaging of municipal bonds simply does not raise the types of issues that led to the risk retention proposals.

The Commission has tacitly acknowledged that asset-based securities with assets consisting of municipal obligations are different from other asset-backed securities. See, e.g., Rule 2a-7 under the Investment Company Act (distinguishing "Conduit Securities" and "Government Securities" in several places).

(ii) Obligations of the United States, agencies of the United States and municipal obligations are to be exempted from the proposed rule on the basis that the federal department or agency or state or local governmental entity involved in those issuances would monitor the quality of the assets repackaged. Repackagings of these obligations does not alter the quality of the assets, thus tender option bonds should be afforded the same exemption as the underlying obligations.

(iii) There exists a strong connection between the tender option bond market, and the greater municipal finance market. The tender option bond market makes available to municipal issuers a larger investor base, thus lowering interest costs to municipal issuers and creating greater liquidity for municipal securities. If the risk retention requirements apply to tender option bonds, then the cost of municipal securities repackagings will increase and the volume of these repackagings will decrease. The result will be a reduced market for municipal obligations, a less liquid market for municipal securities, and higher borrowing costs for municipal issuers. Given the features of tender option bonds, investors will see no significant benefit from the application of risk retention rules, but investors will suffer due to the reduced availability of investments in the tax-exempt market.

(iv) The interests of, and the risks borne by, the parties involved in tender option bonds are already appropriately aligned, thus there is no need for the risk retention rules to apply to tender option bonds. As described below, transaction risks in tender option bonds are appropriately disclosed and are transparent to all parties involved. The tender option bond market has thrived for many years as a result of the proper alignment of each party's interests, and the application of the risk retention rules is unnecessary.

(v) Because the floaters issued in tender option bond programs can be tendered at par plus accrued interest, tender option bond programs already contain risk retention. There is no need to subject tender option bond programs to the additional risk retention rules of the Dodd Frank Act.

(v) Tender option bonds are being, we believe, unintentionally captured within the definition of asset-backed security and the rules of the Dodd Frank Act. Because tender option bonds involve the creation of a special purpose vehicle which will own interest bearing investments and will issue securities, tender option bonds may technically fall within many of the rules of the Dodd Frank Act. We request that tender option bonds be exempted from the risk retention rules in order to eliminate any concern that tender option bonds are included in the risk retention rules as a result of the technical reading of the proposal.

IV. Conclusion

Tender option bonds have been in the marketplace for nearly twenty (20) years and there is nothing inherent in the tender option bond product that warrants the application of the risk retention rules to this market. The tender option bond market brings tax-exempt securities to money market funds that invest in tax-exempt securities. We are not aware of any credit failures in these transactions in the history of the product. The tender option bond market has become a significant aspect of the short term tax-exempt market because there is not sufficient short term tax-exempt product issued by state and local governments to satisfy the demand on the investor side. Application of the risk retention requirements to the tender option bond market will result in a significant contraction of the availability of those investment products to investors.

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We greatly appreciate your consideration of the views set forth in this letter, and we would be pleased to have the opportunity to discuss these matters further with you or with any member of the Commission staff. Please feel free to contact the undersigned at (212) 313-1130 if you have any questions regarding this submission.

Sincerely yours,

Leslie M. Norwood
Managing Director and
Associate General Counsel