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Regulators Re-Propose Dodd-Frank QRM Rule – More Flexibility for "Skin in the Game"

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I. Introduction

In April 2011, six federal agencies - the Board of Governors of the Federal Reserve System, Department of Housing and Urban Development, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, Office of the Comptroller of the Currency, and Securities and Exchange Commission (the "Agencies") – jointly published a proposed rule to implement the credit risk retention or so-called qualified residential mortgage ("QRM") rule pursuant to section 941 of the Dodd-Frank Act, which amended section 15G of the Securities Exchange Act of 1934.[1] On August 27, 2013, the Agencies issued a second proposed rule modifying the original proposal.[2] Comments are due on the second proposal October 30, 2013.

Congress intended that section 15G address problems in the securitization markets by requiring that securitizers[3] generally retain an economic interest in the credit risk of the assets they securitize, i.e., that securitizers retain "skin in the game." As with the original proposal, the new proposal is based on the understanding that when properly structured, securitization provides economic benefits that can lower the cost of credit to households and businesses; however, when incentives are not properly aligned and there is a lack of discipline in the credit origination process, securitization can result in harmful consequences to investors, consumers, financial institutions, and the financial system. In revising the QRM proposal, the Agencies sought to minimize the potential for the proposed rule to negatively affect the availability and costs of credit to consumers and businesses.

The newly proposed QRM rule takes into account the comments received on the original proposal. The modified proposed rule includes several noteworthy provisions, including the originally proposed five percent risk retention requirement; a modified requirement that risk retention be based on the fair value (rather than par value) of the assets underlying the securitization; more flexible risk retention structural options; and several exemptions from the risk retention requirement, including the complete exemption, consistent with the original proposal, for asset-backed securities ("ABS") collateralized solely by qualified residential mortgages ("QRMs").

II. Discussion

A. General Risk Retention Requirement

Consistent with the original proposal, the new proposal would apply a minimum five percent base risk retention requirement to all securitization transactions[4] that are within the scope of section 15G, regardless of whether the sponsor[5] is an insured depository institution, a bank holding company or subsidiary thereof, a registered broker-dealer, or other type of entity, and regardless of whether the sponsor is a supervised entity.

Risk Retention Methods and Options

The newly proposed rule retains the menu of options approach from the original proposal for the permissible forms of risk retention, *e.g.*, standard approach, use of revolving master trusts, asset-backed commercial paper option, etc., but makes a number of modifications to some of the original options. In addition, the rule has been modified to provide sponsors with greater flexibility in determining their amount of required credit risk retention, particularly in combining risk retention options.

For example, the original proposal allowed sponsors to use one of three methods for determining the amount: (i) vertical risk retention; (ii) horizontal risk retention; or (iii) L-shaped risk retention. Under the vertical risk retention option, a sponsor could satisfy its risk retention requirement by retaining at least five percent of each class of ABS interests issued as part of the securitization transaction. Under the horizontal option, a sponsor could retain a first-loss "eligible horizontal residual interest" in the issuing entity in an amount equal to at least five percent of the par value of all ABS interests in the issuing entity that were issued as part of the securitization transaction. Under the L-shaped option, a sponsor, subject to certain conditions, could use an equal combination of vertical risk retention and horizontal risk retention to meet its five percent risk retention requirement. The newly proposed rule would combine the vertical, horizontal, and L-shaped risk retention options into a single risk retention option with a flexible structure.

Additionally, to provide greater clarity for the measure and to help prevent sponsors from evading the risk retention requirement by negating or reducing the economic exposure they are required to maintain, the newly proposed rule would require sponsors to measure their risk retention under the standard options by using fair value, determined in accordance with U.S. generally accepted accounting principles, rather than par value as provided in the original proposal. Thus, a sponsor could satisfy its risk retention obligation by retaining an "eligible vertical interest,"[6] an "eligible horizontal residual interest,"[7] or any combination thereof, in a total amount of no less than five percent of the fair value of all ABS interest in the issuing entity that are issued as part of the securitization transaction.

In the Agencies' view, this option will provide sponsors with greater flexibility in choosing how to structure their risk retention in a manner compatible with the practices of the securitization markets. The proposed rule provides additional restrictions regarding how sponsors are permitted to structure their credit risk retention in order to ensure that sponsors' interests are appropriately aligned with investors' interests.

The Agencies also proposed revisions to other available risk retention options referenced in the original proposal, including for the use of revolving master trusts, which are typically used by a securitization sponsor issuing more than one series of ABS collectively backed by a common pool of assets that are expanded over time. The "seller's interest" form of risk retention, available to revolving master trusts under the original proposal, would be retained. This will entitle a sponsor to "a percentage of all payments of principal, interest and fees, as well as recoveries from defaulted assets" received by the trust.[8] Among the proposed revisions to the master trust option are: (i) allowing sponsors to count first loss positions consistently held across a series of ABC issued by a master trust toward the five percent seller's interest requirement; (ii) basing the seller's five percent interest amount on the trust's amount of outstanding ABS, rather than total trust assets; (iii) allowing the use of the seller's interest risk retention option for master trust securitizations backed by non-revolving assets; and (iv) clarifying applicability of the rule to a master trust in early amortization.

The Agencies also eliminated the "representative sample" risk retention option from the new proposal, which, as discussed in the original proposal, would have allowed a sponsor to retain ownership of a randomly selected representative sample of assets "equal to at least five percent of the unpaid principal balance of all pool assets" initially identified for securitization.[9]

The new proposal retains the original proposal's risk retention option for asset-backed commercial paper ("ABCP") structures, which allows a sponsor to satisfy the base risk retention requirement where each originator-seller of assets into a ABCP conduit "retains the same amount and type of risk as would be required as if the originator-seller was the sponsor of the intermediate special purpose vehicle ("SPV")."[10] Additionally, the new proposal provides additional flexibility for originator-sellers financing extensions of credit (created through their business operations) through ABCP conduits. In addition, additional flexibility is provided within the ABCP option to accommodate intermediate SPVs, including revolving master trusts and pass-through intermediate SPVs. The new proposal retains certain features of the original ABCP option, including the 100 percent liquidity coverage requirement to cover funds required to repay a maturing ABCP issued by the issuing entity. In addition, the new proposal does not facilitate the ability of asset aggregators, who buy loans and receivables from multiple sources, to sell to an intermediate SPV and issue ABCP conduit interests.

The new proposal also provides for: (i) additional flexibility for risk retention under the commercial mortgage-backed securities option; (ii) retention of the 100 percent risk retention treatment set forth in the original proposal for the Government-Sponsored Enterprises (while they remain in conservatorship or under a similar arrangement); (iii) an alternative risk retention option specifically designed and tailored to collateralized loan obligation ("CLO") securitizations and managers; and (iv) additional risk retention options to avoid disruption to municipal bond "repackaging" securitizations.

Hedging, Transfer and Financing Restrictions

Section 15G(c)(1)(A) requires the risk retention regulations to prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset. Consistent with this mandate, the proposed rule prohibits a sponsor from transferring any interest or assets it is required to maintain under the rule to any person other than an affiliate whose financial statements are consolidated with those of the sponsor (a "consolidated affiliate"). An issuing entity is not, however, a consolidated affiliate for purposes of the securitization even if its financial statements are consolidated with those of the sponsor under applicable accounting standards.

The proposed rule also introduces the concept of a "majority-owned affiliate," defined as an entity that, directly or indirectly, majority controls, is majority controlled by, or is under common majority control with, another entity. Under the rule, risk retention could be retained as an initial matter by a majority-owned affiliate, i.e., it would no longer be necessary for a sponsor to hold the required retention interest for a moment in time before transferring it to the affiliate. The newly proposed rule would not prohibit an issuer from engaging in hedging activities itself when such activities would be for the benefit of all investors in the ABS.

Sunset Provision on Hedging and Transfer Restrictions

The Agencies also proposed a sunset provision on the hedging and transfer restrictions in the proposed rule. The proposed rule includes two categories of duration for the transfer and hedging restrictions – one for residential mortgage backed securities and one for other types of ABS. The rationale for the sunset provisions is that the primary purpose of risk retention – sound underwriting – is less likely to be effectively promoted by risk retention requirements after a certain period of time has passed and a peak number of delinquencies for an asset class has occurred.

B. Exemptions from the Risk Retention Requirement

General Exemptions

Certain types of ABS or securitization transactions are required to be totally or partially exempt from the risk retention requirements.[11] These exemptions include:

- Securitizations that are solely collateralized by federally insured or guaranteed residential, multifamily, and health care mortgage loan assets;
- Securitizations of assets issued, insured, or guaranteed by the U.S. or any agency of the U.S. and other exemptions;
- Certain resecuritization transactions;[12]
- Utility legislative securitizations;[13]
- Seasoned loans[14] that are current in repayment; and
- Safe harbor for certain foreign securitization transactions.

FDIC Securitizations

In addition to the exemptions discussed above, the Agencies have proposed an additional exemption from risk retention for securitization transactions sponsored by the FDIC acting pursuant to its authority as conservator or receiver under the FDIA or Title II of the DFA. The Agencies believe this exemption would help ensure high quality underwriting and is in the public interest and for the protection of investors.[15]

Reduced Risk Retention Standards for ABS Backed by Qualifying Commercial, Commercial Real Estate (“CRE”), or Automobile Loans

The Agencies’ original proposal included an exemption for securitizations of commercial loans, commercial real estate loans, and automobile loans that met specific proposed underwriting standards. There were two requirements for all three categories of ABS: (i) a securitization could be backed only by a pool consisting entirely of assets that met the underwriting standards; and (ii) sponsors would be required to repurchase any assets that were found not to have met the underwriting criteria at origination. The underwriting standards for these classes of loans remain substantially similar to the standards in the original proposal.

The proposed rule, consistent with the original proposal, requires that if after issuance of a qualifying asset securitization, it is discovered that a loan does not meet the underwriting criteria, the sponsor would have to repurchase the loan. The proposed rule adds a cure option – that is, if an underwriting defect in a commercial, CRE, or automobile loan is discovered, the sponsor has the option to cure the defect by bringing the loan into conformity with the proposed underwriting standards.

C. *Exemption for QRMs*

Background

As with the original proposal, the heart of the new proposal relates to the so-called "QRM exemption." Section 15G exempts sponsors of securitizations from the risk retention requirements if all of the assets that collateralize the securities issued in the transaction are QRMs. In addition, section 15G requires that the definition of a QRM be "no broader than" the definition of a QM.[16] Under the original proposal, the Agencies proposed to incorporate the statutory QM standards, in addition to other requirements, into the definition of a QRM and apply those standards strictly in setting the QRM requirements to ensure that the definition would comply with the statutory requirement. The scope of the original QRM proposal generated a significant number of comments, the majority of which opposed various aspects of the originally proposed QRM exemption.

In response, the Agencies are proposing to broaden and simplify the scope of the QRM exception from the original proposal and define "qualified residential mortgage" to mean "qualified mortgage" as defined in section 129C of TILA[17] and its implementing regulations. This cross-reference between the proposed rule and the QM standards adopted under TILA is intended to minimize the potential for future conflicts between the QM and QRM standards. The requirements of the parallel QRM/QM definition are designed to help ensure that borrowers are offered and receive residential mortgage loans on terms that reasonably reflect their financial capacity to meet the payment obligations associated with such loans. The definition therefore excludes many loans with riskier product features, such as negative amortization and interest-only payments, and requires consideration and verification of a borrower's income, assets and debt.

Section 129C(a) of TILA, as implemented by the Bureau of Consumer Financial Protection ("CFPB") in the so-called "QM rule" under Regulation Z,[18] requires lenders to make a "reasonable and good faith determination" that a borrower has the ability to repay a residential mortgage loan. The QM rule provide lenders with a presumption of compliance with the ability-to-repay requirement. To obtain the presumption of compliance, the loan must have a loan term not exceeding 30 years; points and fees that generally do not exceed 3 percent; and not have risky product features, such as negative amortization, interest-only and balloon payments (except for those loans that qualify for the definition of QM that is only available to eligible small portfolio lenders).[19]

A somewhat controversial aspect of the original proposal was that a QRM could have a loan-to-value ("LTV") ratio requirement of no more than 80 percent. This requirement raised concerns regarding the availability of mortgage loans to low- and moderate-income and first-time homebuyers. Partially in response to these concerns, the newly proposed QRM rule requires improved verification of income and debt in lieu of the LTV ratio requirement or standards related to a borrower's credit history. In addition, the Agencies have not proposed any additional written appraisal requirement, assumability requirement, or servicing requirement in connection with the QRM standard.

Because the definition of QRM incorporates QM by reference, the proposed definition "would expressly exclude home-equity lines of credit, reverse mortgages, timeshares, and temporary loans or "bridge" loans of 12 months or less, consistent with the original QRM proposal."[20] The proposed QRM definition differs from the original proposal because it would include loans secured by any dwelling (consistent with the definition of QM), not only loans secured by principal dwellings. Additionally, if a subordinate lien meets the definition of a QM, then it would also be eligible to qualify as a QRM, whereas under the original proposal QRM eligibility was limited to first liens.

General QRM/QM definition

The CFPB's QM rule provides several definitions for a QM. Under the new proposal, the Agencies provide that a QRM would be a loan that meets any of the CFPB's QM definitions. These include the general QM definition, which provides that a loan must have:

- Regular periodic payments that are substantially equal;
- No negative amortization, interest only, or balloon features;
- A maximum loan term of 30 years;
- Total points and fees that do not exceed 3 percent of the total loan amount, or the applicable amounts specified in the final QM Rule, for small loans up to $100,000;
- 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;
- Consideration and verification of the consumer's income and assets, including employment status if relied upon, and current debt obligations, mortgage-related obligations, alimony and child support; and
- Total debt-to-income ratio that does not exceed 43 percent.

The CFPB also finalized, and the Agencies have proposed that the QRM definition incorporate, a second temporary QM definition. This temporary definition provides that a loan must have:

- Regular periodic payments that are substantially equal;
- No negative amortization, interest only, or balloon features;
- A maximum loan term of 30 years;
- Total points and fees that do not exceed 3 percent of the total loan amount, or the applicable amounts specified for small loans up to $100,000; and
- Be eligible for purchase, guarantee or insurance by a GSE, HUD, the Veterans Administration, U.S. Department of Agriculture, or Rural Housing Service.[21]

The QRM definition does, however, exclude certain QM loans made by "small creditors," because by definition such loans could not be sold for at least three years.[22]

For a securitization transaction to qualify for the newly proposed QRM exemption, each QRM collateralizing the ABS would be required to be currently performing (i.e., the borrower must not be 30 days or more past due, in whole or in part, on the mortgage) at the closing of the securitization transaction. The depositor for the securitization would be required to certify that within 60 days prior to the cut-off date for establishing the composition of the collateral pool, the depositor has evaluated the effectiveness of its internal supervisory controls to ensure that all of the assets are QRMs, and that its supervisory controls are effective. The sponsor would also be required to provide, or cause to be provided, a copy of this certification to potential investors a reasonable period of time prior to the sale of the securities. If any loans are subsequently determined to be non-qualified after closing, the sponsor would be required to buy back such mortgages.

"QM-Plus" Alternative Approach

In requesting comments on the QRM exemption, the Agencies have proposed a "QM-plus" alternative approach, which would begin with the "core QM criteria" adopted by the CFPB, and then add four additional factors. Pursuant to the threshold core QM criteria, a QRM would be required to meet the requirements for product type, loan term, points and fees, underwriting, income and debt verification, and DTI.[23] Mortgages that meet the CFPB's core QM criteria – whether via the CFPB's safe harbor for standard loans or presumption for higher-priced loans – would pass this core element of the QM-plus test. However, loans that are QMs because they meet the criteria for GSE-eligible covered transactions, small creditor exceptions, or balloon loan provisions would not be considered QRMs under the QM-plus approach.

In addition to meeting the core QM criteria, mortgage loans under the QM-plus approach would have to satisfy all of the following additional requirements to receive QRM treatment under the proposed QM-plus alternative:

- Secured by one-to-four family real properties that constitute the principal dwelling of the borrower;
- First-lien mortgages only;
- The borrower must not be 30 days or more past due on any debt obligation, not more than 60 days past due on any debt obligations within the preceding 24 months, and meet certain other requirements for the preceding 36-month period; and
- An LTV at closing not exceeding 70 percent.

While the QM-plus alternative is clearly intended to provide a more conservative or restrictive approach to QRM treatment, it both lacks the advantages of uniformity and consistency with QMs, and suffers from significant downsides with respect to its restrictiveness and, ultimately, availability of a meaningful QRM exemption. If a form of the QM-plus approach were to be adopted in final form in lieu of the broader QM/QRM parallel treatment, as the Agencies note, the "approach would cover a significantly smaller portion of the mortgage market."[24] Accordingly, we note that the QM-plus option does not appear to be a meaningful policy option for the Agencies to seriously consider at this juncture of QRM debate.

III. Action Plan

The Agencies have requested comment on or before October 30, 2013 on all aspects of the proposed rule, including the general risk retention requirement, the proposed risk retention option with a flexible structure, and the QRM and QM-plus definitions.

Mortgage loan originators and securitizers should solidify an action plan anticipating the implementation of the proposed risk retention modifications. We recommend that industry participants consider reviewing their current underwriting, sales and securitization practices, as well as the wide range of regulatory implications in light of the proposed rule, and consider commenting on the proposed rule by Oct. 30, 2013. For your convenience, the Agencies' questions are attached at Appendix A.

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Paul Hastings' attorneys are actively working with clients to identify and address the impact of the proposed QRM rule on their operations, and to assist in drafting comments to provide to the Agencies. Please feel free to contact any of the following regarding questions in this regard.

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Appendix A – Regulators Re-Propose QRM Rule – More Flexibility for "Skin in the Game"

Pursuant to the re-proposed QRM rule, the Agencies are seeking comment on more than 100 additional questions beyond the 174 questions raised in the original proposal. Comments are due to the Agencies October 30, 2013, on the following substantive questions and issues:

Risk Retention Requirement – Menu of Options

Standard Risk Retention

1(a). Should the agencies require a minimum proportion of risk retention held by a sponsor under the standard risk retention option to be composed of a vertical component or a horizontal component? 1(b). Why or why not?

2(a). The agencies observe that horizontal risk retention, as first-loss residual position, generally would impose the most economic risk on a sponsor. Should a sponsor be required to hold a higher percentage of risk retention if the sponsor retains only an eligible vertical interest under this option or very little horizontal risk retention? 2(b). Why or why not?

3. Are the disclosures proposed sufficient to provide investors with all material information concerning the sponsor's retained interest in a securitization transaction and the methodology used to calculate fair value, as well as enable investors and the agencies to monitor whether the sponsor has complied with the rule?

4(a). Is the requirement for sponsors that elect to utilize the horizontal risk retention option to disclose the reference data set or other historical information that would enable investors and other stakeholders to assess the reasonableness of the key cash flow assumptions underlying the fair value of the eligible horizontal residual interest useful? 4(b). Would the requirement to disclose this information impose a significant cost or undue burden to sponsors? 4(c). Why or why not? 4(d). If not, how should proposed disclosures be modified to better achieve those objectives?

5(a). Does the proposal require disclosure of any information that should not be made publicly available? 5(b). If so, should such information be made available to the Commission and Federal banking agencies upon request?

6. Are there any additional factors that the agencies should consider with respect to the standard risk retention?

7. To what extent would the flexible standard risk retention option address concerns about a sponsor having to consolidate a securitization vehicle for accounting purposes due to the risk retention requirement itself, given that the standard risk retention option does not require a particular proportion of horizontal to vertical interest?

8(a). Is the proposed approach to measuring risk retention appropriate? 8(b). Why or why not?

9(a). Would a different measurement of risk retention be more appropriate? 9(b). Please provide details and data supporting any alternative measurement methodologies.

10(a). Is the restriction on certain projected payments to the sponsor with respect to the eligible horizontal residual interest appropriate and sufficient? 10(b). Why or why not?

11(a). The proposed restriction on certain projected payments to the sponsor with respect to the eligible horizontal residual interest compares the rate at which the sponsor is projected to recover the fair value of the eligible horizontal residual interest with the rate which all other investors are projected to be repaid their principal. Is this comparison of two different cash flows an appropriate means of providing incentives for sound underwriting of ABS? 11(b). Could it increase the cost to the sponsor of retaining an eligible horizontal residual interest? 11(c). Could sponsors or issuers manipulate this comparison to reduce the cost to the sponsor of retaining an eligible horizontal residual interest? How? 11(d). If so, are there adjustments that could be made to this requirement that would reduce or eliminate such possible manipulation? 11(e). Would some other cash flow comparison be more appropriate? 11(f). If so, which cash flows should be compared? 11(g). Does the proposed requirement for the sponsor to disclose, for previous ABS transactions, the number of times the sponsor was paid more than the issuer predicted for such transactions reach the right balance of incremental burden to the sponsor while providing meaningful information to investors? 11(h). If not, how should it be modified to better achieve those objectives?

12(a). Does the proposed form of the single vertical security accomplish the agencies' objective of providing a way for sponsors to hold vertical risk retention without the need to perform valuation of multiple securities for accounting purposes each financial reporting period? 12(b). Is there a different approach that would be more efficient?

13(a). Is three years after all ABS interests are no longer outstanding an appropriate time period for the sponsors' record maintenance requirement with respect to the calculations and other requirements in section 4? 13(b). Why or why not? 13(c). If not, what would be a more appropriate time period?

14(a). Would the calculation requirements in section 4 of the proposed rule likely be included in agreed upon procedures with respect to an interest retained pursuant to the proposed rule? 14(b). Why or why not? 14(c). If so, what costs may be associated with such a practice?

15(a). Other than a cap in the priority of payments on amounts to be paid to the eligible horizontal residual interest and related calculations on distribution dates and related provisions to allocate any amounts above the cap, would there be any additional steps necessary to comply with the alternative proposal? 15(b). If so, please describe those additional steps and any associated costs.

16. Would the cost and difficulty of compliance with the alternative proposal, including monitoring compliance, be higher or lower than with the proposal?

17(a). Does the alternative proposal accommodate more or less of the current market practice than the proposal? 17(b). If there is a difference, please provide data with respect to the scale of that difference.

18. With respect to the alternative proposal, should amounts other than payment of expenses and fees to service providers be excluded from the calculations?

19(a). Does the alternative proposal adequately accommodate structures with unscheduled payments of principal, such as scheduled step downs? 19(b). Does the alternative adequately address structures which do not distinguish between interest and principal received from underlying assets for purposes of distributions?

20(a). Are there asset classes or transaction structures for which the alternative proposal would not be economically viable? 20(b). Are there asset classes or transaction structures for which the alternative proposal would be more economically feasible than the proposal?

21. Should both the proposal and the alternative proposal be made available to sponsors?

22(a). The proposal includes a restriction on how payments on an eligible horizontal residual interest must be structured but does not restrict actual payments to the eligible horizontal residual interest, which could be different than the projected payments if losses are higher or lower than expected. The alternative proposal for payments on eligible horizontal residual interests does not place restrictions on structure but does restrict actual payments to the eligible horizontal residual interest. Does the proposal or the alternative proposal better align the sponsor's interests with investors' interests? 22(b). Why or why not?

Revolving Master Trusts

23(a). Is such prohibition appropriate? 23(b). If not, what is a better approach, and why? Commenters proposing an alternative approach should provide specific information about which revolving trusts in the marketplace currently include such interests in their capital structures, and the manner in which they could comply with a fair value approach.

24. In revising the definition of "seller's interest" the agencies have modified the rule text to exclude "assets that collateralize other specified ABS interests issued by the issuing entity" as well as rule text excluding "servicing assets," which is a defined term under the proposal. Are such exclusions redundant, or would they exclude rights to assets or cash flow that are commonly included as seller's interest?

25(a). Is there a market practice of retaining vertical forms of risk retention at the series level? 25(b). What advantages and disadvantages would there be in allowing sponsors to meet their risk retention requirement through a combination of seller's interest and vertical holdings at the series level?

26(a). Are the disclosure and recordkeeping requirements in the proposal appropriate? 26(b). Why or why not? 26(c). Is there a different time frame that would be more appropriate and if so, what would it be?

27(a). Are there changes the agencies should consider making to the proposed early amortization and excess funding account provisions in order to align them better with market practice while still serving the agencies' stated purpose of these sections? 27(b). If so, what changes should the agencies consider?

28(a). The agencies request comment as to how long existing revolving master trusts would need to come into compliance with the proposed risk retention rule under the conditions described above. Do existing master trust agreements effectively prohibit compliance? 28(b). Why or why not? 28(c). From an investor standpoint, what are the implications of the treatment requested by sponsor commenters, under which sponsors would only hold a seller's interest with respect to post-effective date issuances of ABS interests out of the trust?

29(a). Should the agencies approve exceptions on a case by case basis during the post-adoption implementation period, subject to case-specific conditions appropriate to each trust? 29(b). How many trusts would need relief and under what circumstances should such relief be granted?

30. The agencies seek to formulate the seller's interest form of risk retention in a fashion that provides meaningful risk retention on par with the base forms of risk retention under the rule, and at the same time accommodates prudent features of existing market structures. The agencies request comment whether the proposal accomplishes both these goals and, if not, what additional changes the agencies should consider to that end.

Representative Sample

31(a). Should the agencies include a representative sample option as a form of risk retention? 31(b). If so, how should such an option be constructed, consistent with establishing a statistically representative sample? 31(c). What benefits would including such an option provide to the securitization market, investors, borrowers, or others?

ABCP Conduits

32(a). To the extent that the proposed ABCP risk retention option does not reflect market practice, how would modifying the proposal help ensure high quality underwriting of ABCP? 32(b). What structural or definitional changes to the proposal would be appropriate, including but not limited to any changes to the proposed definitions of 100 percent liquidity coverage, eligible ABCP conduit, intermediate SPV, majority-owned OS affiliate, originator-seller, and regulated liquidity provider? 32(c). Do ABCP conduits typically have 100 percent liquidity coverage as defined in the proposal? 32(d). What percentage of ABCP conduits and what percentage of ABCP currently outstanding was issued by such conduits?

33(a). Do ABCP conduits typically only purchase assets directly from intermediate SPVs (i.e., that meet the requirements of the proposal? 33(b). What percentage of ABCP currently outstanding was issued by such conduits?

34(a). Do ABCP conduits typically purchase receivables directly from customers, rather than purchasing ABS interests from SPVs sponsored by customers? 34(b). What percentage of ABCP currently outstanding was issued by such conduits? 34(c). Is the requirement that an ABCP conduit relying on this option may not purchase receivables directly from the originator appropriate? 34(d). Why or why not?

35(a). Is the requirement that an ABCP conduit relying on this option may not purchase ABS interests in the secondary market appropriate? 35(b). Why or why not? 35(c). Does the proposed ABCP option appropriately capture assets that are acquired through business combinations?

36(a). Do ABCP conduits typically purchase corporate debt securities on a regular or occasional basis? 36(b). What percentage of ABCP currently outstanding was issued by such conduits?

37(a). Do ABCP conduits typically purchase ABS in the secondary market on a regular or occasional basis? 37(b). What percentage of ABCP currently outstanding was issued by such conduits?

38. With respect to ABCP conduits that purchase assets that do not meet the requirements of the proposal, what percentage of those ABCP conduits' assets do not meet the requirements?

39(a). Should the agencies allow multiple eligible liquidity providers for purposes of the ABCP risk retention options? 39(b). If so, should this be limited to special circumstances? 39(c). Should the agencies allow a liquidity provider to provide liquidity coverage with respect to a specific ABS interest?

40(a). Does the definition of majority-owned OS affiliate appropriately capture companies that are affiliated with an originator-seller? 40(b). Why or why not?

41. Should the rule require disclosure of the originator-seller in the case of noncompliance by the originator-seller?

42(a). Should the rule also require disclosure to investors in ABCP in all cases of violation of this section? 42(b). Why or why not? 42(c). If so, should the rule prescribe how such disclosure be made available to investors?

43. Are there other changes that should be made to disclosure provisions?

44. Should the rule provide further clarity as to who will be deemed a sponsor of ABCP issued by an ABCP conduit?

45(a). Should there be a supplemental phase-in period (beyond the delayed effective dates in 15 U.S.C. 78o-11(i)) for existing ABCP conduits that do not meet the proposed definition of eligible ABCP conduit? 45(b). Why or why not? 45(c). If so, what would be the appropriate limit (e.g., up to 10 percent of the assets in the ABCP conduit could be nonconforming), and what would be the appropriate time period(s) for conformance (e.g., up to two years)?

Commercial Mortgage-Backed Securities

46. Should the period for B-piece transfer be any longer or shorter than five years? Please provide any relevant data analysis to support your conclusion.

47(a). Should the agencies only allow one third-party purchaser to satisfy the risk retention requirement? 47(b). Should the agencies consider allowing for more than two third-party purchasers to satisfy the risk retention requirement?

48(a). Are the third-party qualifying criteria the agencies are proposing appropriate? 48(b). Why or why not? 48(c). Would a sponsor be able to track the source of funding for other purposes to determine if funds are used for the purchase of the B-piece?

49(a). Are the Operating Advisor criteria and responsibilities the agencies are proposing appropriate? 49(b). Why or why not?

Open Market CLOs

50(a). Does the proposed CLO risk retention option present a reasonable allocation of risk retention among the parties that originate, purchase, and sell assets in a CLO securitization? 50(b). Are there any changes that should be made in order to better align the interests of CLO sponsors and CLO investors?

51. Are there technical changes to the proposed CLO option that would be needed or desirable in order for lead arrangers to be able to retain the risk as proposed, and for CLO sponsors to be able to rely on this option?

52(a). Who should assume responsibility for ensuring that lead arrangers comply with the requirement to retain an interest in CLO-eligible tranches? 52(b). Would some sort of ongoing reporting or periodic certification by the lead arranger to holders of the CLO-eligible tranche be feasible? 52(c). Why or why not?

53(a). The agencies would welcome suggestions for alternate or additional criteria for identifying lead arrangers. 53(b). Do loan syndications typically have more than one lead arranger who has significant influence over the underwriting and documentation of the loan? 53(c). If so, should the risk retention requirement be permitted to be shared among more than one lead arranger? 53(d). What practical difficulties would this present, including for the monitoring of compliance with the retention requirement? 53(e). How could the rule assure that each lead arranger’s retained interest is significant enough to influence its underwriting of the loan?

54(a). Is the requirement for the lead arranger to take an initial allocation of 20 percent of the broader syndicated credit facility sufficiently large to ensure that the lead arranger can exert a meaningful level of influence on loan underwriting terms? 54(b). Could a smaller required allocation accomplish the same purpose?

55(a). The proposal permits lead arrangers to sell or hedge their retained interest in a CLO-eligible loan tranche if those loans experience a payment or bankruptcy default or are accelerated. Would the knowledge that it could sell or hedge a defaulted loan in those circumstances unduly diminish the lead arranger’s incentive to underwrite and structure the loan prudently at origination? 55(b). Should the agencies restrict the ability of lead arrangers to sell or hedge their retained interest under these circumstances? 55(c). Why or why not?

56(a). Should the lead arranger role for “CLO-eligible” loan tranches be limited to federally supervised lending institutions, which are subject to regulatory guidance on leveraged lending? 56(b). Why or why not?

57(a). Should additional qualitative criteria be placed on CLO-eligible loan tranches to ensure that they have lower credit risk relative to the broader leveraged loan market? 57(b). What such criteria would be appropriate?

58(a). Should managers of open market CLOs be required to invest principal in some minimal percentage of the CLO’s first loss piece in addition to meeting other requirements for open market CLOs proposed herein? 58(b). Why or why not?

59(a). Is the requirement that all assets (other than servicing assets) consist of CLO-eligible loan tranches appropriate? 59(b). To what extent could this requirement impede the ability of a CLO sponsor to diversify its assets or its ability to rely on this option? 59(c). Does this requirement present any practical difficulties with reliance on this option, particularly the ability of CLO sponsors to accumulate a sufficient number of assets from CLO-eligible loan tranches to meet this requirement? 59(d). If so, what are they? 59(e). Would it be appropriate for the agencies to provide a transition period (for example, two years) after the effective date of the rule to allow some investment in corporate or other obligations other than CLO-eligible loan tranches or servicing assets while the market adjusts to the new standards? 59(f). What transition would be appropriate? 59(g). Would allowing a relatively high percentage of investment in such other assets in the early years following the effective date (such as 10 percent), followed by a gradual reduction, facilitate the ability of the market to utilize the proposed option? 59(h). Why or why not? 59(i). What other transition arrangements might be appropriate?

60(a). Should an open market CLO be allowed permanently to hold some de minimis percentage of its collateral assets in corporate obligations other than CLO-eligible loan tranches under the option? 60(b). If so, how much?

61(a). Is the requirement that permitted hedging transactions be limited to interest rate and currency risks appropriate? 61(b). Are there other derivative transactions that CLO issuing entities engage in to hedge particular risks arising from the loans they hold and not as means of gaining synthetic exposures?

62(a). Is the requirement that the holders of a CLO-eligible loan tranche have consent rights with respect to any material waivers and amendments of the underlying legal documents affecting their tranche appropriate? 62(b). How should waivers and amendments that affect all tranches (such as waivers of defaults or amendments to covenants) be treated for this purpose? 62(c). Should holders of CLO-eligible loan tranches be required to receive special rights with respect to those matters, or are their interests sufficiently aligned with other lenders?

63. How would the proposed option facilitate (or not facilitate) the continuance of open market CLO issuances?

64(a). What percentage of currently outstanding CLOs, if any, have securitized assets that consist entirely of syndicated loans? 64(b). What percentage of securitized assets of currently outstanding CLOs consist of syndicated loans?

65(a). Should unfunded portions of revolving credit facilities be allowed in open market CLO collateral portfolios, subject to some limit, as is current market practice? 65(b). If yes, what form should risk retention take? 65(c). Would the retention of 5 percent of an unfunded revolving commitment to lend (plus 5 percent of any outstanding funded amounts) provide the originator with incentives similar to those provided by retention of 5 percent of a funded term loan? 65(d). Why or why not?

66(a). Would a requirement for the CLO manager to retain risk in the form of unfunded notes and equity securities, as proposed by an industry commenter, be a reasonable alternative for the above proposal? 66(b). How would this meet the requirements and purposes of section 15G of the Exchange Act?

Municipal Bond “Repackaging” Securitizations

67(a). Do each of the additional options proposed with respect to repackagings of municipal securities accommodate existing market practice for issuers and sponsors of tender option bonds? 67(b). If not, are there any technical adjustments that need to be made in order to accommodate existing market practice?

68(a). Do each of the additional options proposed with respect to repackagings of municipal securities adequately align the incentives of sponsors and investors? 68(b). If not, are there any additional requirements that should be added in order to better align those incentives?

Premium Cash Reserve Account

69(a). Should the proposed rule require a sponsor to fund all or part of its risk retention requirement with own funds, instead of using proceeds from the sale of ABS interests to investors? 69(b). Would risk retention be more effective if sponsors had to fund it entirely with their own funds? 69(c). Why or why not?

70(a). Should the agencies require a higher amount of risk retention specifically for transaction structures which rely on premium proceeds, or for assets classes like RMBS and CMBS which have relied historically on the use of premium proceeds? 70(b). If so, how should this additional risk requirement be sized in order to ensure risk retention achieves the right balance of cost versus effectiveness?

Allocation to Originator

71(a). If originators were allocated risk only as to the loans they originate, would it be operationally feasible to allocate losses on a loan-by-loan basis? 71(b). What would be the degree of burden to implement such a system and accurately track and allocate losses?

Hedging, Transfer and Financing Restrictions

72(a). Is the scope of the proposed restriction relating to majority-owned affiliates, and affiliates generally, appropriate to prevent sponsors from avoiding losses arising from a risk retention asset? 72(b). Should the agencies, instead of the majority-owned affiliate approach, increase the 50 percent ownership requirement to a 100 percent ownership threshold under a wholly-owned approach?

Exemptions

Exemption for Certain Resecuritization Transactions

73(a). Would the issuance of an inverse floater class of ABS be necessary to properly structure other classes of ABS to provide adequate pre-payment protection for investors as part of the resecuritization transaction? 73(b). Would this prohibition frustrate the goals of the proposed exemption?

Safe Harbor for Foreign Securitization Transactions

74. Are there any extra or special considerations relating to these circumstances that the agencies should take into account?

75(a). Should the more than 10 percent proceeds trigger be higher or lower (e.g., 0 percent, 5 percent, 15 percent, or 20 percent)? 75(b). If so, what should the trigger be and why? 75(c). Are the eligibility calculations appropriate? 75(d). If not, how should they be modified?

Sunset on Hedging and Transfer Restrictions

76(a). Are the sunset provisions appropriately calibrated for RMBS (i.e., later of five years or 25 percent, but no later than seven years) and all other asset classes (i.e., later of two years or 33 percent)? 76(b). If not, please provide alternative sunset provision calibrations and any relevant analysis to support your assertions.

77(a). Is it appropriate to provide a sunset provision for all RMBS, as opposed to only amortizing RMBS? 77(b). Why or why not? 77(c). What effects might this have on securitization market practices?

Reduced Risk Retention Requirements and Underwriting Standards for ABS Backed by Qualifying Commercial, Commercial Real Estate, or Automobile Loans

78(a). In light of the significant expansion of the proposed definition of QRM, should the agencies similarly significantly expand the type of loans that would meet the qualifying commercial, commercial real estate and automobile loan exemptions? 78(b). If so, please provide sufficient detailed data regarding loan underwriting criteria for each type of loan.

Qualifying Commercial Loans

79(a). Are the revisions to the qualifying commercial loan exemption appropriate? 79(b). Should other revisions be made?

80(a). In evaluating the amortization term for qualifying commercial loans, is full amortization appropriate? 80(b). If not, what would be an appropriate amortization period or amount for high-quality commercial loans?

Qualifying Commercial Real Estate Loans

81(a). Is including these requirements in the QCRE exemption appropriate? 81(b). Why or why not?

82. The agencies request comment on the proposed underwriting standards, including the proposed definitions and the documentation requirements.

Qualifying Automobile Loans

83(a). Are the revisions to the qualifying automobile loan exemption appropriate? 83(b). If not, how can they be modified to more appropriately reflect industry standards?

84. Are all the proposed underwriting criteria appropriate?

Qualifying Asset Exemption

85. Commenters on the QRM approach contained in the agencies' original proposal requested that the agencies permit blended pools for RMBS. The agencies invite comment on whether and, if so how, such an approach may be constructed where the underlying assets are residential mortgages, given the provisions of paragraph (c)(1)(B)(i)(II) and the exemption authority in paragraph (c)(2)(B), (e)(1) and (e)(2) of Section 15G.

86(a). How should the proportional reduction in risk retention be calculated? 86(b). What additional disclosures should the agencies require for collateral pools that include both qualifying and non-qualifying assets? 86(c). How would these additional disclosures enhance transparency and reduce the risk of sponsors taking advantage of information asymmetries? 86(d). Should a collateral pool that secures asset-backed securities be subject to a minimum total risk retention requirement of 2.5 percent? 86(e). If not, what would be an appropriate limit on the amount of qualifying assets that may be included in a collateral pool subject to 0 percent risk retention? 86(f). What other limiting mechanisms would be appropriate for mixed collateral pools?

87(a). Would a maturity mismatch limit such as the one discussed above (such that qualifying and non-qualifying assets do not have a difference in maturity of more than one year) be an appropriate requirement for collateral pools containing qualifying and non-qualifying assets? 87(b). How should such a limit be structured? 87(c). What other limits would be appropriate to address the investor and agency concerns discussed above?

Buyback Requirement

88. The agencies request comment on the buyback provision for qualifying loans, including on the proposed changes discussed above to allow cure and to incorporate a materiality standard.

Proposed Definition of QRM

89(a). Is the agencies' approach to considering the QRM definition, as described above, appropriate? 89(b). Why or why not? 89(c). What other factors or circumstances should the agencies take into consideration in defining QRM?

90. Does the proposal reasonably balance the goals of helping ensure high quality underwriting and appropriate risk management, on the one hand, and the public interest in continuing access to credit by creditworthy borrowers, on the other?

91. Will the proposal, if adopted, likely have a significant effect on the availability of credit? Please provide data supporting the proffered view.

92(a). Is the proposed scope of the definition of QRM, which would include loans secured by subordinate liens, appropriate? 92(b). Why or why not? 92(c). To what extent do concerns about the availability and cost of credit affect your answer?

93(a). Should the definition of QRM be limited to loans that qualify for certain QM standards in the final QM Rule? 93(b). For example, should the agencies limit QRMs to those QMs that could qualify for a safe harbor under 12 CFR 1026.43(e)(1)? Provide justification for your answer.

Exemption for QRMs

94(a). Are the proposed certification requirements appropriate? 94(b). Why or why not?

95(a). What difficulties may occur with the proposed repurchase requirement under the QRM exemption? 95(b). Are there alternative approaches that would be more effective? 95(c). Provide details and supporting justification.

Alternative QRM Approach

96(a). As documented in the initial proposal, academic research and the agencies' own analyses show that credit history and loan-to-value ratio are key determinants of mortgage default, along with the product type factors that are included in the QM definition. If QRM criteria do not address credit history and loan-to-value, would securitizers packaging QRM-eligible mortgages into RMBS have any financial incentive to be concerned with these factors in selecting mortgages for inclusion in the RMBS pool? 96(b). Is the incentive that would be provided by risk retention unnecessary in light of the securitizer incentives and investor disclosures under an approach that aligns QRM with QM as described in the previous section of this Supplementary Information?

97(a). Does the QM-plus approach have benefits that exceed the benefits of the approach discussed above that aligns QRM with QM? For example, would the QM-plus approach favorably alter the balance of incentives for extending credit that may not be met by the QM definition approach or the QRM approach previously proposed? 97(b). Would the QM-plus approach have benefits for financial stability?

98. Would the QM-plus approach have greater costs, for example in decreased access to mortgage credit, higher priced credit, or increased regulatory burden?

99. Other than the different incentives described above, what other benefits might be obtained under the QM-plus approach?

100(a). Would setting the QRM criteria to be the same as QM criteria give originators additional reasons to have reservations about lending outside the QM criteria? 100(b). Would the QM-plus approach, which confers a distinction on a much smaller share of the market than the approach that aligns QRM with QM, have a different effect?

101. In light of these factors, the agencies seek comment on whether the QM-plus approach would encourage a broader non-QRM market and thus mitigate concerns about the types of costs associated with a narrow QRM approach described above. Considering the number of institutions in the market with securitization capacity and expertise that already hold RMBS interests presenting the same types of risks as the RMBS interests the proposed rule now establishes as permissible forms of risk retention, would the requirement to retain risk in a greater number of securitizations under the QM-plus approach act as a restraint on the amount and cost of mortgage credit available in the market?

102. How would the QM-plus approach influence investors' decisions about whether or not to invest in private RMBS transactions?

103. How would the QM-plus approach affect or not affect investor appetite for investing in private label RMBS as opposed to securitizations guaranteed by the Enterprises?

104. Since more RMBS transactions would be subject to risk retention under the QM-plus approach, how would the proposed forms of risk retention affect sponsors' willingness to participate in the market?

105. The agencies request comment whether the QM-plus approach should also include mortgages that fall within QM status only in reliance on the CFPB's provisions for GSE-eligible covered transactions, small creditors, or balloon loans. For all but the GSE-eligible covered transactions, the CFPB's rules make the mortgages ineligible for QM status if the originator sells them into the secondary market within three years of origination. For GSE-eligible loans, it appears sale to the GSEs may remain the best execution alternative for small originators (although the agencies are seeking comment on this point). The agencies request commenters advocating inclusion of these non-core QMs under the QM-plus approach to address specifically how inclusion would improve market liquidity for such loans.

106. The agencies request comment whether, notwithstanding the agencies' concern about this additional risk of default, the agencies should remove the outright prohibition on piggyback loans from the QM-plus approach.

107(a). Commenters, including one group representing RMBS investors, expressed concern that excluding loans to a borrower that is 30 days past due on any obligation at the time of closing from the definition of QRM would be too conservative. The QM-plus approach is based on the view that these 30-day credit derogatories are typically errors, or oversights by borrowers, that are identified to borrowers and eliminated during the underwriting process. Thus a 30-day derogatory that cannot be resolved before closing is an indication of a borrower who, as he or she approaches closing, is not meeting his or her obligations in a timely way. The agencies request comments from originators as to this premise. 107(b). The agencies also request comment on whether the QM-plus approach should permit a borrower to have a single 60-day plus past-due at the time of closing, but not two. 107(c). The agencies further request comment on whether this approach should be included if the borrower's single 60-day past-due is on a mortgage obligation.

Foreign Safe Harbor

With respect to the proposed foreign safe harbor in the proposal, the SEC requests comments on the following additional questions:

1. Are the descriptions of the current risk retention practices and structures or practices that align the interests of investors and sponsors correct with respect to all ABS asset classes, but, in particular, in the following: ABCP, CLO, RMBS, automobile loan backed ABS, and master trusts with seller's interests?

2. With respect to current risk retention practices: what share of ABS interest is currently retained (less/more than 5 percent)? What type of ABS interest is currently retained (horizontal, vertical, L-shaped, seller's interest)? When was this practice or structure developed (before or after the crisis, before or after the promulgation of the Dodd-Frank Act)? Is information about risk retention (size or shape) for specific transactions disclosed to investors? To what extent is this practice or structure in response to regulatory restrictions (e.g., EU risk retention regulations or the FDIC safe harbor)?

3. Is there a difference in historical delinquency rates/performance of securitizations in which the sponsor retained ABS interests and securitizations in which the sponsor did not retain ABS interests? Is there a difference in the timing of defaults of securitizations in which the sponsor retained ABS interests and securitizations in which the sponsor did not retain ABS interests?

4. What are the estimates of the potential costs of appointing the independent operating advisors for the proposed CMBS B-piece option?

5. To what extent do the sponsor and/or its affiliates receive subordinated performance fees with respect to a securitization transaction? Are the subordinated performance fees received by the sponsor and its affiliates equal to or greater than the economic exposure they would get from the 5 percent risk retention requirements? Because subordinated performance fees only align incentives when the assets are performing above a certain threshold, should there be any additional restrictions on the use of performance fees to satisfy risk retention requirements?

6. To the extent not already provided, what are the estimates of the cost (including opportunity cost) of 5 percent risk retention and how will 5 percent retention affect the interest rates paid by borrowers under securitized loans?

7. What would be the costs of establishing the risk retention level above the statutory 5 percent? What would be the benefits?

8. Are there any additional costs that the agencies should consider with respect to the risk retention?

9. Are the sunset provisions appropriate for RMBS (i.e., the latter of (x) 5 years and (y) the reduction of the asset pool to 25% of its original balance, but (z) no longer than 7 years) and all other asset classes (i.e., the latter of (x) 2 years and (y) the reduction of the asset pool balance to 33%)? What data can be used to support these or alternative sunset bounds?

10. To what extent do the requirements and/or restrictions included in each of the risk retention options limit the ability of sponsors to use the option?

11. To what extent are the deals funded by ABCP conduits included in the deal volumes for other asset classes?

12. To the extent that a warehouse line is funded by the issuance of revolving ABS, is that ABS included in the deal volume?

13. It would be helpful to receive additional information about the fees charged by sponsors for setting up securitizations, sponsors interpretation of their opportunity cost of capital, the interaction of regulatory capital with cost of capital, and historical returns of tranches of different asset classes, in particular the residual interest.

14. The Commission requests data about master trusts that would permit it to estimate the amount of risk currently retained.

15. The Commission currently lacks sufficient data to quantitatively assess the potential impact of the proposed minimum 5 percent retention requirement. In connection with the re-proposal, the Commission seeks data or other comment on the economic effects of the proposed minimum 5 percent requirement.

16. The Commission also requests comment on methodologies and data that could be used to quantitatively analyze the appropriate level of risk retention, both generally and for each asset class.

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[1] Credit Risk Retention; Proposed Rule, 76 Fed. Reg. 24090 (Apr. 29, 2011). For a summary of the original proposal, see "Regulators Propose 'Skin in the Game' Rule," Paul Hastings StayCurrent (Apr. 2011), available at http://www.paulhastings.com/publications-items/details/?id=95b42a26-8aa5-6986-8b86-ff00008cffc3.

[2] A copy of the newly issued proposal is available at http://www.fdic.gov/news/board/2013/2013-08-28_notice_dis_a_res.pdf.

[3] "Securitizer" with respect to a securitization transaction means either (i) the depositor of the asset-backed securities (if the depositor is not the sponsor); or (ii) the sponsor of the asset-backed securities. See Proposed Rule s. __.2.

[4] "Securitization transaction" means a transaction involving the offer and sale of asset-backed securities by an issuing entity. See Proposed Rule s. __.2.

[5] "Securitization transaction" means a transaction involving the offer and sale of asset-backed securities by an issuing entity. See Proposed Rule s. __.2.

[6] See Proposed Rule s. __.2.

[7] *See id*.

[8] *See* preamble to Proposed Rule at 62.

[9] *Id*. at 81.

[10] *Id*. at 93.

[11] *Id*. at 93.

[12] In a resecuritization transaction, the asset pool underlying the ABS issued in the transaction comprises one or more ABS.

[13] In a resecuritization transaction, the asset pool underlying the ABS issued in the transaction comprises one or more ABS.

[14] Seasoned loans are loans that were originated a significant period of time prior to securitization.

[15] *See* 15 U.S.C. 78o-11(e).

[16] *See* 15 U.S.C. 78o-11(c)(1)(C)(3).

[17] 15 U.S.C. 1639c.

[18] 12 C.F.R. 1026.43(c).

[19] *See* 78 Fed. Reg. 35430 (Jun. 12, 2013).

[20] *See* preamble to Proposed Rule at 265.

[21] *See* 12 C.F.R. 1206.43(e)(4)(ii).

[22] An entity qualifies as a "small creditor" if it does not exceed $2 billion in total assets; originates 500 or fewer first-lien covered transactions in the prior calendar year (including all affiliates); and holds the QMs in portfolio for at least three years, with certain exceptions. *See* 12 C.F.R. § 1026.43(e)(5)(i)(D), as discussed at 78 Fed. Reg. 35480-88 (Jun. 12, 2013).

[23] 12 C.F.R. § 1026.43(e)(2).

[24] *See* preamble to Proposed Rule at 277.