Testimony of Paul Vanderslice on behalf of the Commercial Real Estate Finance Council
House Financial Services Committee, Subcommittee on Capital Markets and Government Sponsored Enterprises
Hearing on "The Dodd-Frank Act's Impact on Asset-Backed Securities"
February 26, 2014

Thank you Chairman Garrett, Vice Chairman Hurt, and Ranking Member Maloney for the opportunity to testify today. I am the co-head of the U.S. CMBS Group and the head of the Commercial Mortgage distribution efforts for Citigroup Global Markets. However, I am testifying today on behalf of the Commercial Real Estate Finance Council, or ("CREFC"), where I most recently served as Chair. My comments will focus on the recently re-proposed risk retention rules and CMBS.

CREFC is the collective voice of the entire $3.1 trillion commercial real estate finance market. Its members include balance sheet, Agency and CMBS lenders as well as loan and bond investors and servicing firms of all types. Our industry plays a critical role in the financing of all types of income producing properties – commercial and multifamily.

My testimony today will focus only on the CMBS side of commercial real estate finance as CMBS is the sector subject to the risk retention rules and Regulation AB. To give you a better sense of the significance of this industry, Mr. Chairman and Ranking Member Maloney, in the combined New York MSA, there are thousands of properties with outstanding CMBS loans totaling over $66 billion. Mr. Vice Chairman, in the Commonwealth there are over 2,100 properties with outstanding CMBS loans with a value of over $26.2 billion.

CMBS is an integral component of CRE lending because it expands the pool of available loan capital beyond what balance sheet lenders (banks and insurance companies) can contribute.

In 2013, CMBS provided almost 25 percent of all CRE financing – over $80 billion.[1] CMBS also provided 34 percent of all CRE loans to tertiary markets and 24 percent to secondary markets.[2] No other lender source comes close to serving these markets to that extent.

The proposed CMBS retention rules impose a cost on borrowers that is projected to be between 40 to 50 basis points. This translates into an increased cost burden on commercial property owners of 8 to 10 percent at current market borrowing rates of approximately 5 percent. CRE values are highly correlated to the cost of financing.

A strong consensus across all CREFC constituencies was reached on a set of recommendations to the risk retention rules re-proposed this past August. These recommendations are discussed in detail in CREFC's written comments.

In promulgating the rules, the Agencies stated that their goal is "to minimize the potential for the proposed rule to negatively affect the availability and costs of credit to consumers and businesses."[3] For CMBS, the Agencies also made it clear that they are trying "to balance two overriding goals: (1) not disrupting the existing CMBS third-party purchaser structure, and (2) ensuring that risk retention promotes good underwriting."[4]

CREFC and its members are supportive of the goal of risk retention in the proposed rules. However, we believe strongly that the rules should provide optionality and flexibility for achieving this goal. Simply put, there is more than one means to an end. Allowing our industry this optionality and flexibility will allow risk retention to be achieved fully but with the least possible amount of marketplace disruption.

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[1] Real Capital Analytics.
[2] Real Capital Analytics.
[3] *See* Proposed Rule, Credit Risk Retention, 78 Fed. Reg. 57928, 57934 (Sept. 20, 2013).
[4] *Id.* at 57958.

Today, I will address our core recommendations we submitted to regulators.

Cash Flow Test for the Eligible Horizontal Retained Interest

First, regulators are concerned about a misalignment of interest between issuers and investors if cash flow rates allow an issuer to get cashed out of its investment before investors. Therefore, they proposed a cash flow test designed to align payouts to issuers and investors, respectively. However, the test is fatally flawed when applied to CMBS issuances. All CMBS transactions would fail the test because of the inherent structure of CMBS deals. The Agencies recognized the flaw and asked us to provide a better test method which we have done. That proposed solution is unanimously supported by all CREFC constituencies, including investors.

B-Piece Structure Issues

Second, for CMBS only, the proposed rules allow a third-party purchaser that buys the first-loss position to bear the retention obligation. These so-called B-Piece investors are a bedrock component of CMBS deal structures and both the statute itself and the regulators recognize their importance and the discipline they bring to the underwriting process. The re-proposed regulations, however, have two significant flaws which must be corrected:

1. The actual amount of retention required under the re-proposed rules is quite significant – effectively 5 percent of the cash proceeds (or "fair value") of the bond sales – which is about double the capital investment made by B-piece buyers in current deals. This means that the B-piece buyer will have to buy not only the non-rated tranche and some of the low B to BB rated bonds (current practice), but also BBB and even A class bonds. Typical buyers of these mezzanine bonds are insurance companies, money managers and mortgage REITs. B-piece buyers are not capitalized to buy these higher rated bonds.

To mitigate this investment capital burden, the regulations allow two B-Piece investors to jointly share the retention obligation. However, the proposed risk retention rule requires that they must hold their positions side by side on a *pari passu* basis. This arrangement doesn't help the B-piece investor buy further up the capital stack as is required to fulfill its risk retention obligation. Instead of investing *pari passu*, the B-piece buyer and another investor should be allowed to stack their respective investments on top of one another to achieve the 5 percent requirement.

This would enable the marketplace to divide the 5 percent tranche into two slices – the rated bond portion which would be purchased by a mezzanine investor and the non-investment grade portion which would be bought by the B-piece investor. Both investors would have to conduct due diligence of the pool and hold the investment for 5 years. The result is 5 percent risk retention with the least disruption to the marketplace.

Without this senior-subordinate structure, additional cost will be passed through to borrowers hindering the CRE market recovery.

2. As part of their investment, B-Piece buyers have the right to appoint the "special servicer" who is charged with overseeing and working out distressed loans included in the CMBS loan pool. This is because the initial risk of loss from those distressed loans falls on the B-Piece Buyer as the first loss investor. The proposed risk retention rule allows an Operating Advisor to recommend that a special servicer be replaced if it believes it is in the best interest of investors. The rule also requires that this recommendation must be approved by a majority vote of a mere 5-percent quorum of all investors. Current practice quorums are typically 50 percent.

There was a strong consensus among the CREFC members that this threshold should increase to a quorum requirement of at least 20 percent, with a minimum of at least three investors participating in the vote.

QCRE Parameters

Fourth, the proposed rules would exempt "Qualified Commercial Real Estate" or QCRE loans from the retention regime if specified parameters are satisfied. The QCRE goal is to reward conservative underwriting. There was a broad consensus among CREFC members – including among the investment grade ("IG") investors – that the QCRE parameters should be modified by making four changes to the proposed QCRE loan parameters. Based on historical data from all CMBS deals since 1997, our recommendations would expand the universe of QCRE-eligible loans from 3.6 percent of CMBS loans to 15.6 percent but – using the same data – the cumulative loss percentage for those qualifying loans would fall from to 0.74 percent to 0.57 percent.[5] This is in contrast to other qualifying asset exemptions, under which a vast majority of assets would qualify.

Single Borrower Single Credit Transactions

Fifth, there also was a strong consensus across all CREFC constituencies to completely exempt Single Borrower/Single Credit ("SBSC") deals from the retention regime. SBSC deals involve only one loan (or a pool of cross-collateralized loans that essentially function as one loan). Historically, there has been no role for B-Piece Investors in SBSC transactions; SBSC transparency is extremely high because granular loan details are reported to potential investors; and SBSC loss experience has been exceedingly low.

Furthermore, because these transactions effectively contain only one loan, it is much easier for institutional investors to evaluate the credit of the transaction before investing and they have broader access to data because the deals typically are done in the private "144A" market.

[5] *See* CRE Finance Council Comment Letter Appendix 6 (showing the number of loans to be considered QCRE under the Proposed Rule and the CRE Finance Council recommendations).

In response to regulator concerns that there is no *mandatory* disclosure for 144A deals, CREFC developed a mandatory SBSC disclosure regime that would have to be satisfied to qualify for the retention exemption. There is a strong consensus among all CREFC members – including a majority consensus among the IG Investors whom the retention rules are designed to protect – that these SBSC deals should be completely exempt from the retention rules. A one-size-fits-all approach lumping these transactions in with others would not benefit CMBS investors.

Regulation AB

Finally, with respect to Reg AB, I would like to highlight just two issues from our comment letter to the SEC. First, CREFC conceptually has no objection to the type of oversight functions that are contemplated to be performed by the credit risk manager in the Re-Proposed Rules. However, we do not believe that it is necessary or efficient to require that an additional deal party provide these functions in the CMBS market. We believe that these functions are already being performed in most cases by the servicer, special servicer and the Operating Advisor.

Second, CREFC urged the Commission not to require a chief executive officer's certification in connection with shelf registration eligibility because the requirement is duplicative of other rules and regulations with respect to CMBS already in place. These rules already contain robust accountability and oversight mechanisms. The cost of implementing an additional certification would significantly outweigh any incremental benefit to CMBS investors.

Conclusion

Mr. Chairman, we want to make risk retention work, not eliminate it, and we believe that the recommendations I have outlined today and that CREFC has advanced in its comment letters would help accomplish that objective. I am happy to answer any questions you may have.

CRE Finance Council, Written Testimony Exhibit A
HFS Capital Markets Subcommittee, February 26, 2014

October 4, 2011

VIA ELECTRONIC FILING – rule-comments@sec.gov
Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment, Release Nos. 33-9244; 34-64968; File No. S7-08-10

Dear Ms. Murphy:

The Commercial Real Estate ("CRE") Finance Council® appreciates the opportunity to respond to the request of the Securities and Exchange Commission (the "Commission") for comments on the release (the "Release")[1] of re-proposed rules (the "Re-Proposed Rules") with respect to Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment relating to asset-backed securities ("ABS").

There are a number of parts of the Re-Proposed Rules which the CRE Finance Council supports. We wish to note that our comments focus on areas of the Re-Proposed Rules and the questions with respect to which we believe comment is necessary and appropriate for participants in the commercial mortgage-backed securities ("CMBS") market. We further wish to note that our comments in this letter are in addition to those we previously submitted, which we respectfully re-affirm.[2]

The CRE Finance Council is the collective voice of the entire $3.5 trillion commercial real estate finance market, including portfolio, multifamily, and CMBS lenders; issuers of CMBS; loan and bond investors such as insurance companies, pension funds and money managers; servicers; rating agencies; accounting firms; law firms; and other service providers.

[1] SEC Release Nos. 33-9244; 34-64968; File No. S7-08-10.

[2] *See* CRE Finance Council Comments re: Asset Backed Securities, Release Nos. 33-9117; 34061858; File No. S7-08-10, available at http://cmbs.informz.net/cmbs/data/images/crefc_final_comments_to_sec.pdf

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Our principal functions include setting market standards, facilitating the free and open flow of market information, and education at all levels, particularly related to securitization. Securitization is one of the essential processes for the delivery of capital necessary for the growth and success of commercial real estate markets. One of our core missions is to foster the efficient and sustainable operation of CMBS. To this end, we have worked closely with policymakers to educate and inform legislative and regulatory actions to produce efficient and practical regulatory structures. We look forward to continuing to work with policymakers on this effort. We also continue our ongoing work with all market constituencies to develop industry standards which provide marked improvements in the CRE finance arena. Prime examples of our work include enhancements of both the CRE Finance Council's "Annex A" initial loan-level disclosure package and the Investor Reporting Package ("IRP")™ for ongoing disclosures and surveillance by investors.

I. <u>Overview</u>

We recognize and appreciate the fact that the Commission has considered concerns expressed by the industry in our previous comment letters, particularly those pertaining to the criteria for shelf eligibility and those pertaining to our desire to better align the interests of issuers and investors without impairing the efficient operation of the CMBS market.

As such, we would like to focus our observations on the need for certain clarifications and modifications regarding the new Re-Proposed Rules, including:

- the proposed requirement that the chief executive officer or executive officer in charge of securitization of the depositor file a certification concerning the disclosure contained in the prospectus and the design of the securitization as a condition to shelf eligibility;

- the proposed requirement that an annual evaluation be filed with respect to compliance with registration requirements as a condition to shelf eligibility;

- the proposed requirement that the underlying transaction documents contain provisions requiring the appointment of a credit risk manager to review assets upon the occurrence of certain trigger events as a condition to shelf eligibility;

- the proposed requirement that the underlying transaction documents contain provisions requiring repurchase request dispute resolution as a condition to shelf eligibility;

- the proposed requirement that certain investor communication provisions be included in the underlying transaction documents as a condition to shelf eligibility;

- the proposed requirement that underlying transaction documents, in substantially final form, be filed by the date the preliminary prospectus is required to be filed under Rule 424(h); and

- certain of the questions concerning additional asset level data disclosure.

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Certification of Chief Executive Officer or Executive Officer in Charge of Securitization: The requirement of a certification is duplicative of other rules and regulations that apply to CMBS and is therefore unnecessary. CMBS transactions and structures already (i) contain robust disclosure in the prospectus supplement (including disclosure with respect to the transaction structure and the underlying assets), (ii) pursuant to Section 945 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Reform Act"), will be required to contain disclosure with respect to the diligence performed on the underlying assets in the prospectus supplement, and (iii) require the signature of the chief executive officer on the registration statement, for which the chief executive officer incurs personal securities law liability (including liability with respect to the disclosure in the prospectus supplement) pursuant to Section 11(a) of the Securities Act of 1933.

However, if the Commission believes that a certification of the chief executive officer of the depositor or the executive officer in charge of securitization will provide significant value, we believe that while the re-proposed language addresses a number of the concerns we had with the original version of the certification, additional enhancements should be adopted to further clarify the Commission's proposed language.

Annual Compliance Certification: Our members appreciate the Commission's efforts to address the commercial real estate industry's concerns with respect to the annual compliance certification. We appreciate the change from a quarterly to an annual compliance certification, as an annual certification is aligned with CMBS market practices. We also appreciate the revisions permitting the issuer to cure non-compliance. We do, however, request that the issuer be permitted to re-obtain shelf eligibility 30 days post-cure rather than the 90 day period set forth in the Re-Proposed Rules. Once certification compliance is cured a further delay in shelf eligibility is merely punitive and serves no purpose in providing investors with information.

Credit Risk Manager: Our members firmly believe securitization structures are enhanced by the use of a professional to provide oversight. The CMBS structures in use in 2011 already incorporate the most critical elements of such oversight function through the duties of the servicer, special servicer and operating advisor. Requiring an additional party to be inserted into these structures with its attendant costs and decision making inefficiencies provides no real value to investors. With respect to CMBS transactions, it would be more cost effective and efficient to allow the servicer, special servicer and the operating advisor to perform the functions of a credit risk manager. In addition, certain of the provisions of the Re-Proposed Rules with respect to the credit risk manager should be modified with respect to CMBS transactions to take into account the unique aspects of the CMBS market.

Repurchase Request Dispute Resolution: Including in deal documents a dispute resolution mechanism with respect to repurchase requests for breaches of asset level representations and warranties may improve sector performance, but our members recommend that the Commission allow the transaction parties to determine the method of dispute resolution rather than including a specific method in the rules.

Investor Communication: Many 2010-2011 CMBS securitizations have included features to facilitate investor communications which may be important for members to

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effectively enforce certain rights under the transaction documents. Our members appreciate the Commission's attempt to address investor concerns with respect to their ability to organize with other investors to effectively enforce their rights under the transaction documents. We believe, however, that the Commission should require that the underlying transaction documents provide reasonable methods of investor communications instead of requiring one or two particular methods. Our members, including investors, have concerns about the delay and inconvenience if investor communications are required to be made through the 10-D filings and have additional concerns about privacy issues if communications are required to be filed. Some investors also desire anonymity and public disclosure of their identity could have an adverse effect on the marketability of the securities.

Filing of Substantially Final Underlying Transaction Documents: Our members have no objections to the requirement that underlying transaction documents, in substantially final form, be filed at the same time as the prospectus supplement is required to be filed pursuant to Rule 424(h). We request that the Commission clarify that the underlying transaction documents required to be filed be limited to those that are required to be exhibits to the registration statement. In addition, we request that the Commission specify that the issuer will not be required to wait an additional 5 business days prior to selling the first certificate due solely to a changes to the underlying transaction documents after the Rule 424(h) filing.

Additional Asset Level Data Disclosure Questions: Our members have reviewed the questions with respect to additional asset level data disclosure set forth in the Release and appreciate the opportunity to comment on those we feel will impact the CMBS market. In general, we ask the Commission to take into account the robust package of asset level information already provided by the CMBS industry pursuant to the IRP and Annex A to the offering document, the form of which has been revised by the CRE Finance Council to improve disclosure.

Our specific comments regarding the Re-Proposed Release are below.

II. Certification of Chief Executive Officer or Executive Officer in Charge of Securitization

The Re-Proposed Rules would require that the chief executive officer of the depositor or the executive officer in charge of securitization file a certification concerning the disclosure contained in the prospectus and the design of the securitization in connection with any shelf offering. In our comments on the initial proposal, the CRE Finance Council urged the Commission not to require a chief executive officer's certification in connection with shelf registration eligibility because the requirement is duplicative of other rules and regulations with respect to CMBS already in place or to be put in place, including Section 11(a) of the 1933 Act (which imposes personal securities law liability for material misstatements or omissions on any officer who signs the registration statement), Item 601(b)(31) of Regulation S-K (which, in general, requires either the senior officer in charge of securitization of the depositor or the servicer to certify that the exchange act periodic reports are not misleading), Item 1123 of Regulation AB (which requires a servicing compliance statement signed by a senior officer), and Section 945 of the Reform Act (which requires disclosure with respect to the diligence performed on the underlying assets in the prospectus supplement). Considering the

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aforementioned certifications that the CMBS industry is already required to provide, we believe that the laws and regulations governing the industry already contain robust accountability and oversight mechanisms. Therefore we believe that the cost of implementing an additional certification significantly outweighs any incremental benefit to CMBS investors.

If the Commission does decide to require a certification, however, we suggest the re-proposed certification language be modified as follows:

I, [identify the certifying individual,] certify as of [the date of the final prospectus under Securities Act Rule 424 (17 CFR §239.424)] that:

1. I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] (the "Securities") and am familiar with the structure of the securitization described therein, ~~including without limitation~~ the material characteristics of the securitized assets underlying the offering (the "Assets"), the material terms of any internal credit enhancements and the material terms of all material contracts and other arrangements entered in to ~~the~~ effect the securitization;

2. Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

3. Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part, ~~fairly present~~ disclose in all material respects the characteristics of the ~~securitized a~~Assets ~~underlying the offering described therein~~ and the risks of ownership of the ~~asset-backed s~~Securities, ~~described therein, including~~ all credit enhancements and all risks ~~factors~~ relating to the ~~securitized a~~Assets ~~underlying the offering~~ that would materially and adversely affect the cash flows ~~sufficient~~ available to service payments on the ~~asset-backed s~~Securities in accordance with their terms as described in the prospectus; and

4. Based on my knowledge, taking into account the material characteristics of the ~~securitized a~~Assets ~~underlying the offering~~, the structure of the securitization, ~~including~~ the material terms of any internal credit enhancements, and any other material features of the transaction, in each instance, as described in the prospectus, the securitization is structured in a manner that is expected~~designed~~ to produce, but is not guaranteed by this certification to produce, cash flows at times and in amounts sufficient to service ~~expected~~ payments on the ~~asset-backed s~~ Securities in accordance with their terms as described in the prospectus; provided that the timing and sufficiency of such cash flows may be materially and adversely affected by the risks and uncertainties described in the prospectus relating to the Assets and the ownership of the Securities.~~offered and sold pursuant to the registration statement~~.

The foregoing statement is a forward-looking statement within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements speak only as of the date they are made, and the undersigned undertakes no obligation to update any forward-looking statement to reflect the impact of circumstances or events that arise after the date the forward-looking statement was made. No person should place undue reliance on any forward-looking statement and should consider the risks and uncertainties described herein and in the prospectus.

In addition, we ask that the Commission confirm that any party signing the certification is entitled to the due diligence defense under Section 11(b) of the Securities Act of 1933 and is entitled to rely on information provided by third party originators, third party report providers and other transaction parties.

Finally, although we appreciate the Commission's willingness to consider allowing an independent evaluator to provide the certification on behalf of the issuer, we believe that few, if any; third parties would agree to provide this service. Attorneys and accountants involved in the securitization and issuance of securities are likely prohibited from providing this certification and other parties are not likely to provide any meaningful disclosure. Further, the expense involved in retaining a third party would most likely be prohibitive for the issuer. Therefore, we do not believe that this alternative is necessary.

Recommendation: We firmly believe that no real value will be added by requiring an additional certification as contemplated by the Re-Proposed Rules. However, if the Commission believes that a certification of the chief executive officer or executive officer in charge of securitization of the depositor concerning the disclosure contained in the prospectus and the design of the securitization is necessary considering the robust accountability and oversight already applicable to the CMBS industry, the CRE Finance Council recommends that the re-proposed certification language be revised as set forth above.

III. Annual Compliance Certification

The Re-Proposed Rules would require that an issuer perform an annual evaluation of compliance with shelf registration requirements as of 90 days after the end of its fiscal year in order to conduct a takedown off an effective shelf registration statement. The depositor or issuer can cure any failure to meet shelf registration requirements by subsequently filing the required information and, 90 days after such subsequent filing, will be permitted to continue to use the shelf registration.

We appreciate the Commission's decision to require an annual instead of a quarterly evaluation, as it aligns the rule more closely to market practices. We also appreciate the addition of a cure mechanism for non-compliance with shelf registration requirements, as the ability of an issuer to complete a takedown off its shelf registration statement promptly as needed is critical to the successful functioning of the CMBS market. We believe, however, that a 90-day waiting period after filing of all necessary information is excessive and will cause unnecessary punitive delays in CMBS issuance.

Recommendation: For the reasons mentioned above, the CRE Finance Council recommends that a depositor or issuing entity be allowed to continue to use its shelf registration after a waiting period of 30 days following any corrective subsequent filing.

IV. Credit Risk Manager

The Re-Proposed Rules would require, as a condition to shelf eligibility, that the underlying transaction documents contain provisions requiring the appointment of a credit risk manager to review assets upon the occurrence of certain trigger events. These provisions are in lieu of the requirement contained in the initial proposed rules that any party obligated to repurchase assets for breaches of representations and warranties furnish an independent third party opinion regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement and any other relevant transaction documents with respect to any assets that were not repurchased after a request by the trustee. Although we understand the Commission's desire to provide an alternative mechanism for investigating and resolving breaches of representations and warranties and we appreciate the removal of the independent third party opinion condition from the Re-Proposed Rules, we do not believe that this aspect of the Re-Proposed Rules, as drafted, is the best way to achieve the Commission's goals with respect to CMBS transactions.

Appointment of Credit Risk Manager

The Re-Proposed Rules would require that a credit risk manager be appointed by the trustee, which credit risk manager may not be affiliated with any sponsor, depositor or servicer in the transaction. The CRE Finance Council recognizes that other trade associations in the securitization industry have endorsed the concept of a credit risk manager in their comments to the previous proposal, but they did so with a focus on residential mortgage backed securitization [3] and with the caveat that the credit risk manager concept might not be necessary for all asset types.[4] It should be noted that, with respect to residential mortgage backed securitizations, the issuer generally retains the servicing duties and there is no independent third party reviewing the assets and the servicing decisions. This is not the case in CMBS.

The Commission indicated in the Release that the purpose of requiring the appointment of an independent credit risk manager is to facilitate enforcement of representations and warranties and the resolution of disputes regarding breaches of representations and warranties. The credit risk manager would be required to review the underlying transaction assets for compliance with the representations and warranties upon the occurrence of certain trigger events which must be, at a minimum, (i) the failure to meet certain credit enhancement requirements specified in the underlying transaction documents, such as required reserve account amounts or overcollateralization percentages and (ii) the direction of investors pursuant to a process set forth in the underlying transaction documents and disclosed in the prospectus.

Although our members conceptually have no objection to the type of oversight functions that are contemplated to be performed by the credit risk manager in the Re-Proposed Rules, we do not believe that it is necessary or efficient to require that an additional deal party provide these functions in the CMBS market. We believe that these functions are already being performed in most cases by the servicer, special servicer and the operating advisor.

In CMBS transactions, the special servicer performs a review and provides an asset status report with respect to any asset that is transferred to special servicing. In connection with such review, the special servicer is given access to the entire servicing and mortgage file with respect

[3] See letter from ASF, Aug. 2, 2010, comments at 24.

[4] See letter from SIFMA, Aug. 2, 2010, comments at 18, n.27.

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to the asset. An asset is transferred to special servicing upon the occurrence of any one or more of a number of events, including a monetary event of default, a material non-monetary event of default beyond certain grace periods and a bankruptcy or insolvency event with respect to an obligor. These trigger events have been developed over time by the participants in CMBS transactions and are meant to encompass events that would cause a lender to question the status of an asset or the obligor in respect of the asset.

Servicers and special servicers in CMBS transactions are often independent of the depositor and the loan sellers, and are required pursuant to the transaction documents to act in the best interests of the certificateholders, as a collective whole. In addition, many CMBS transactions now include and, pursuant to the risk retention rules currently proposed by the Reform Act, will be required under certain circumstances to include, an operating advisor appointed at the transaction's inception to ensure that the special servicer's overall performance complies with its contractual responsibilities. The operating advisor must be an independent third party, unaffiliated with the special servicer, or according to a modification proposed by the CRE Finance Council in its comments on the risk retention proposal, must undertake measures to mitigate any potential conflict of interest if there is any affiliation with a transaction party.[5] Therefore, although special servicers in CMBS transactions, unlike transactions with respect to other asset classes, are generally not affiliated with parties responsible for repurchases due to breaches of asset level representations and warranties, to the extent there is a perceived conflict with respect to the special servicer, the presence of the operating advisor in addition to the special servicer's contractual obligations to act in the interests of all certificateholders, should alleviate the concerns about perceived conflict. In addition, CMBS transactions contain provisions pursuant to which the servicer, special servicer and the operating advisor may be removed and replaced upon the occurrence of an event of default or by a certain class or percentage of certificateholders. Therefore, unlike other asset classes, CMBS transaction documents already include measures to provide transaction parties with access to all information and the duty to act in the best interest of all certificateholders and CMBS transaction documents contain checks and balances to ensure that such parties act in accordance with the requirements of the transaction documents.

We believe that the inclusion of another party in the deal structure for CMBS transactions is unnecessary given the roles of the current transactions parties. The servicer, special servicer and operating advisor should be allowed to perform the functions of a credit risk manager with respect to CMBS transactions. In addition, requiring another transaction party would greatly increase the transaction costs of CMBS without providing any material corresponding benefits to investors. Allowing the servicer, special servicer and operating advisor to perform these functions would be much more cost efficient, as such parties' compensation is already factored into CMBS transaction costs.

Functions of Credit Risk Manager

Although our members generally do not object to the oversight functions described with respect to the credit risk manager in the Re-Proposed Rules, we have certain concerns with

[5] CRE Finance Council risk retention comments at 31.

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respect to these functions as contemplated in the Release. In particular, we would like to comment on (i) the proposed trigger events for asset review by the party performing the functions of the credit risk manager, (ii) the proposed disclosure of reports with respect to potential breaches of representations and warranties in public filings, (iii) the question of whether the party performing the functions of the credit risk manager should be allowed to file a breach claim on behalf of the securitization trust and (iv) the question of whether parties with repurchase obligations should be required to file annual certificates stating all required repurchases were made or explaining why a repurchase request was refused.

Trigger Events. We do not believe the trigger event with respect to the failure to meet certain credit enhancement requirements specified in the underlying transaction documents is appropriate for CMBS transactions, as CMBS transactions do not contain such credit enhancement requirements. Rather, the sequential pay feature of CMBS structurally allocates risk to the lower bonds in lieu of using triggers. Thus, each investor knows up front his/her priority in the waterfall, and triggers are not necessary. Moreover, as mentioned above, CMBS transaction documents contain provisions requiring that an asset be transferred to special servicing upon certain events and that the special servicer perform a review of any asset transferred to special servicing. These special servicing transfer events have been negotiated among industry participants and reflect events CMBS investors consider materially adverse and worthy of review. As such, these events should be deemed triggers for CMBS for purposes of the proposed rule. Likewise, we believe that the trigger event for representation and warranty breach review for CMBS transactions, like special servicing transfer events, should be negotiated by the transaction parties to reflect matters material to our asset class and set forth in the underlying transaction documents instead of being dictated by the rules. We note that the special servicer is contractually obligated to represent the best interests of all certificateholders in accordance with the industry standard of care.

Finally, we note that our proposal for CMBS servicers, special servicers and operating advisors to perform the credit risk manager role is consistent with the Commission's proposal for review upon investor-direction. The operating advisor construct, as proposed by the CRE Finance Council in its risk retention comments, provides for operating advisor review upon investor request as prescribed in the transaction documents. Thus, this framework addresses concerns that investors have a means to pursue remedies when a breach of representations and warranties is suspected.

Public Filing of Breach Reports. We do not believe that a report concerning potential breaches should be filed as an exhibit to the Form 10-D filing or on a Form 8-K. In many instances when a breach claim is being pursued in our industry, a workout is also being negotiated with the related obligor. Our members, including investors, believe that it could be detrimental to the transaction parties if detailed information about potential breaches and workouts is required to be publicly filed prior to the resolution of such matters. There is concern among a broad spectrum of transaction parties, including investors, that the availability of too much detailed information to the public with respect to breaches and potential workouts could jeopardize a successful resolution of the asset, including, for example, revealing resolution strategies or otherwise informing defaulted borrowers in a way that would give them an inappropriate negotiating advantage. Our investor members have indicated that they do not need

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a full report with respect to potential breaches but instead would like to be apprised that a breach claim has been made, and subsequently provided with summary information describing the general status and resolution of the claim.

In addition, our investor members have indicated that they would prefer to be apprised of potential breaches through an information source they already rely on, rather than being required to consult yet another source. The information should also be made available in a manner that will be useful to investors while not jeopardizing the potential for successful workouts as described above. Our investor members therefore recommend that the existing IRP be used to provide such information and that this information be such that it can be added in the existing data fields in the IRP. For example, the "Special Servicer Comments" field could very briefly describe whether a breach claim has been made, and what the general status or disposition of the claim is. To avoid overwhelming investors with information that they would need to process and overwhelming issuers with reporting obligations, the IRP fields would only include this information when a special servicer or operating advisor is reviewing a loan pursuant to the terms of the transaction documents.

<u>Claims for Breach by Reviewing Party</u>. Our members do not see any benefit to requiring that the underlying transaction documents give the party providing the breach review the discretion to assert a claim for breach on behalf of the securitization trust, as this function is already delegated to the special servicer pursuant to CMBS transaction documents. Therefore, this requirement would provide no real value to investors.

<u>Annual Certification of Repurchase Status</u>. Our members do not see any benefit to requiring that each party with a repurchase obligation provide an annual certificate to the trustee and noteholders certifying that all loans required to be repurchased under the transactions documents have been repurchased or why any loans identified as breaching a representation or warranty were not repurchased. We believe that the requirements of Form 15G are sufficient with respect to repurchase requests and their status and that requiring an additional certificate would be onerous and add expense without providing any material value.

<u>Recommendation:</u> For the reasons stated above the CRE Finance Council recommends that, with respect to CMBS transactions, (i) the servicer, special servicer and operating advisor be permitted to perform the duties of the credit risk manager set forth in the Re-Proposed Rules, as negotiated in the underlying transaction documents for each transaction, (ii) the trigger events for a review with respect to a possible breach of a representation and warranty be left to the negotiated agreement of the transaction parties and set forth in the underlying transaction documents for each transaction, (iii) public filing of the reports of the reviewing party should not be required and instead limited information with respect to breach claims should be included in the existing IRP reports, (iv) the party performing the breach review should not have the ability to bring a claim on behalf of the securitization trust, rather, it should be left as currently structured to the special servicer tasked with that responsibility, and (v) an annual statement with respect to the status of repurchases by the obligated parties is duplicative and unnecessary and should not be required.

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V. Repurchase Request Dispute Resolutions

The Re-Proposed Rules would require that the underlying transaction documents include a provision that states that, if an asset subject to a repurchase request is not repurchased by the end of the 180-day period beginning when notice of the repurchase request is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

Our members support the idea of alternative dispute resolution mechanisms with respect to repurchase claims for breaches of representations and warranties, and members of the CMBS industry have had numerous discussions concerning possible ways of providing alternative dispute resolution mechanisms. The CRE Finance Council incorporated mediation as a mechanism in its model representations and warranties in response to the concerns of our members.[6] Requiring utilization of specific mechanisms for such dispute resolution would not be appropriate, however. The CMBS market is unique and needs the flexibility to incorporate appropriate mechanisms for each transaction based on the specific factors with respect to such transaction. We support a requirement that the underlying transaction documents provide some form of alternative dispute mechanism, but that final determination of such mechanism should be left to the discretion of the transactions parties.

Recommendation: For the reasons stated above, the CRE Finance Council recommends that, with respect to CMBS transactions, the rules mandate that a form of alternative dispute resolution must be set forth in the underlying transaction documents, but that the specific form of dispute resolution not be specified in the rules.

VI. Investor Communication

The Re-Proposed Rules would require, as a condition to shelf eligibility, that the underlying transaction documents include a provision requiring that the party responsible for making periodic filings on Form 10-D include in the Form 10-D any request from an investor to communicate with other investors related to such investor's rights under the terms of the securitization, provided that such request is made during the reporting period and received by the reporting party on or before the end date of the reporting period. The Release proposes that the disclosure on Form 10-D be required to include the name of the investor making the request, the date the request was received and a description of the method by which investors may contact the requesting investor.

We understand that the Commission is seeking to address investor concerns over their ability to organize with other investors and effectively enforce their rights under the transaction documents. We do not object to a requirement that transaction documents provide a reasonable

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[6] See CRE Finance Counsel model representations and warranties and model dispute resolution, available at www.crefc.org/uploadedFiles/CMSA_Site_Home/Government_Relations/CMBS_20/CREFC_Model_Reps.pdf and www.crefc.org/uploadedFiles/CMSA_Site_Home/Government_Relations/CMBS_20/CREFC_Remediation.pdf, respectively. See also the related submittal letters to federal regulators dated January 19, 2011 and March 23, 2011.

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method for investors to communicate. In order to retain the flexibility to develop the best methods of communication, however, we do not believe that the method of communication should be specified in the rules.

Our investor members have indicated that they would prefer to use existing communication channels developed by the industry to communicate with each other instead of communicating through the Form 10-D filings for several reasons. The requirement that communications be made through the Form 10-D filing would delay communications between investors. Because the Form 10-D is filed with the Commission within 15 days of the distribution date, the filing would be made 16 to 60 days after the request was made. In addition, because the From 10-D filing is available to the public, a number of our investor members have voiced privacy concerns and stated that in certain situations they may want to contact other investors without doing so publicly. Finally, our investor members would prefer to receive information and communications through existing channels they already regularly monitor instead of incurring the additional monitoring costs and inconvenience of regularly reviewing the Form 10-D filings.

The CMBS market regularly responds to changing investor concerns with respect to the provision of information to investors and communications among investors and transaction parties. The industry currently provides a number of methods of communication with investors including distribution date statements, the comprehensive IRP developed by the CRE Finance Council and transaction level websites, which provide investors with real time forums to communicate and receive information. We believe that allowing transaction parties and investors to use one of these existing methods of communication or to craft a new method of communication meeting their unique requirements would better facilitate meaningful communication.

Likewise, the CMBS industry already has proven requirements and processes in place for investors to gain access to certain reports and transaction websites. Our members believe that the rules should not specify any maximum, minimum or specific requirements for verifying if a party making a communication request is an investor, but should instead allow the transaction parties to determine the best method of verification. Should the Commission decide to include rules with respect to investor verification requirements, it should be noted that the record holder listed with respect to a majority of CMBS certificates is the Depository Trust Company and, in such instances, the communication request should be coming from the beneficial owner and not the record holder. Although the trustee can request a list of beneficial owners from the Depository Trust Company, the process is costly and can take days or weeks to complete. In addition, a custodian, and not the true beneficial owner is often the party named on the Depository Trust Company's holder report.

Recommendation: For the reasons mentioned above, the CRE Finance Council recommends that, with respect to CMBS transactions, the Commission require that the underlying transaction documents provide a reasonable method for investors to communicate, but not specify such method or specify the method by which the transaction parties may verify an investor's identity.

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VII. Filing of Substantially Final Underlying Transaction Documents

The Re-Proposed Rules would require issuers to file copies of the underlying transaction agreements, in substantially final form, at the time the preliminary prospectus under proposed Rule 424(h). The Release also included a question as to whether issuers should be required to file, as an exhibit to the prospectus supplement, a copy of the representations, warranties, remedies and exceptions with respect to the transaction assets, marked to show how they compare to industry developed model provisions.

Our members do not object to the requirement concerning the filing of substantially final forms of the underlying transaction documents at the time the preliminary prospectus is filed under proposed Rule 424(h). We ask, however, that the Commission specify in the final rule that the underlying transaction documents required to be so filed are limited to those currently required to be filed as exhibits to the registration statement. In addition, we ask that the Commission include a statement in the final rule indicating that any changes made to the underlying transaction documents after the initial Rule 424(h) filing would not require a subsequent Rule 424(h) filing. Any changes to the underlying transaction documents that would be material to investors would be reflected in the prospectus supplement and, therefore, the requirement for a new Rule 424(h) filing with respect to material changes in the prospectus supplement should be sufficient. The underlying transaction documents for CMBS transactions include numerous parties and are often revised up to the moment of the transaction closing. Requiring a new Rule 424(h) filing due to changes in the underlying transaction documents would be unduly burdensome and would unnecessarily delay the closing of CMBS transactions.

Although our members generally do not object to the proposed filing requirement with respect to the underlying transaction documents and understand the Commission's reasons for proposing the requirement, we do not believe that issuers should be required to similarly file, as an exhibit to the prospectus supplement, a copy of the representations, warranties, remedies and exceptions with respect to the transaction assets, marked to show how they compare to industry developed model provisions, as one commentator suggested. Rule 17g-7 of the Reform Act already requires rating agencies to provide this information in their pre-sale reports. In addition, the representations and warranties, remedies and exceptions will be set forth in the substantially final mortgage loan purchase agreement filed at the time of the Rule 424(h) filing. This will provide investors with sufficient time to compare the provisions to any standard or industry developed model they choose.

Recommendation: For the reasons mentioned above, the CRE Finance Council recommends that, with respect to CMBS transactions, (i) a clarifying statement be added to the rule specifying that the underlying transaction documents required to be filed are only those currently required to be filed as exhibits to the registration statement, (ii) a subsequent Rule 424(h) filing not be required due solely to changes to the underlying transaction documents previously filed and (iii) issuers not be required to file the representations, warranties, remedies and exceptions with respect to the transaction assets, marked to show how they compare to industry developed model provisions.

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VIII. Additional Asset Level Data Disclosure Questions

Our members have reviewed the Commission's questions concerning additional asset level data disclosure set forth in the Release. Certain of the questions posed in the Release have little or no relevance to CMBS and are, therefore, not addressed in this letter. For instance, Questions 92 through 97 relate to reporting when assets are added to the pool after issuance and should, therefore, be inapplicable to CMBS transactions, which have static asset pools. Our thoughts with respect to those questions we believe are relevant to the CMBS market are set forth below.

Question 68: Question with respect to the implementation of Section 7(c) by the proposed rules:

As stated in our previous response letter, our members agree with the Commission that robust information is necessary to give investors the ability to make informed investment decisions, as evidenced by the CMBS industry's longstanding use of the IRP, which already includes the vast majority of the Commission's proposed general and CMBS-specific data items. The CRE Finance Council, including investor members, feels strongly that the addition of new fields that are not of significance to CMBS or the inclusion of fields that are not in exact alignment with how those fields may be reported in the current IRP would cause significant, costly and undue programming burdens without any material benefit to investors. To that end, the CRE Finance Council recommends that the SEC tailor Schedule L-D to take into consideration the data points as already presented in the IRP. We have re-attached, as Exhibit A, our suggested modifications to each proposed Item on Schedule L-D and, as Exhibit B, a sample of the form of Schedule L-D for CMBS that gives effect to such suggested modifications. We would like to work with the Commission to create a schedule that will meet the goals of providing robust data while allowing CMBS transaction participants and data users to provide a subset of data as it is presented in the current IRP.

In addition, the CRE Finance council believes that distribution of data through SEC filings does not add much value in the CMBS context but would add costs to the transactions. As set forth in our prior response letter, the CMBS market has been a leader in ongoing reporting as is evidenced by the IRP. The IRP is either distributed directly to investors or made easily accessible to investors electronically much sooner than proposed filings, thereby making such filings unnecessary and of little value to investors. Our investor members have indicated that they would prefer to be provided information pursuant to a distribution source they already rely on, rather than being required to consult yet another source. We therefore urge the Commission to consider allowing the CMBS market to distribute any required ongoing reporting through means already in place, such as the IRP.

Question 69: Question with respect to the proposed required XML format:

The CMBS industry has an existing mechanism for standardizing and comparing data across similar securities through the IRP. In addition, as set forth in our prior response letter, based on a survey of investor members, we are not aware of any investor who converts IRP data from Excel to XML. Therefore, we firmly believe that it would be a significant, costly burden to convert to a new technology and could potentially cause additional data quality risks as the

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conversion is implemented. Our members believe that XML is an adequate standard for the format of data, and are in fact working to develop a roadmap for establishing a new IRP to accommodate XML delivery. However, we do not believe that requiring the CMBS industry to convert to an XML format is appropriate or worth the cost.

Questions 70-76: Questions relating to loan brokers and originators:

As opposed to certain other asset classes, loans originated for CMBS are originated in a competitive rate environment with multiple lenders competing for commercial borrowers' loans. The identity of the originator is already disclosed in the transactions documents and, therefore, numbers are not necessary. In addition, additional disclosure on tax identification numbers and other identifying information could potentially be used to facilitate financial fraud and create potential privacy and security issues. Our members do not see any benefit to providing such information in the context of CMBS and, therefore, do not believe it is worth the risks involved.

Questions 77-78: Questions regarding whether risk retention figures should be allocated and reported on a loan level basis:

Our members do not believe this would add any value in the CMBS industry and therefore do not support the addition of this disclosure.

Question 79: Question with respect to disclosing net present value on loss mitigation v. foreclosure:

It is our interpretation that this questions regarding disclosure of net present value analysis is relative to RMBS only. Such disclosure for CMBS, given the numerous alternatives, numerous variables associated with varying property types and income generating properties and numerous legal paths to asset recovery, would be inadvisable, unduly burdensome and would not provide a comprehensive picture to investors. With respect to CMBS, detailed standards are already in place within the transaction documents setting forth the manner in which a special servicer is to determine and execute the best recovery method for an asset. These existing standards set forth in the transaction documents should be sufficient for the CMBS market.

Question 80: Question with respect to fee disclosure:

We do not believe that any additional disclosure with respect to fees received by transaction parties is required in the CMBS market. Fees earned by servicers, trustees and other parties are already disclosed on a monthly basis and in a manner familiar to CMBS investors pursuant to the IRP. Requiring additional duplicative disclosure would add cost to the transactions without providing any real additional value.

IX. Private Transactions

The CRE Finance Council notes that the Re-Proposed Rules continue to discuss the concept of requiring CMBS issuers in privately offered transactions to provide information to investors, upon request, that they would have been required to provide if the transaction had been publicly offered. Our members would like to reiterate to the Commission that applying this rule to CMBS issuers would be detrimental to a significant sector of the CMBS market and ask that

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the Commission re-evaluate our discussion with respect to this matter in our response letter to the initial proposed rules.

X. Conclusion

The CRE Finance Council appreciates the Commission's consideration of our comments regarding the Re-Proposed Rules. We stand ready to provide any additional assistance that may be helpful.

Respectfully submitted,

Stephen M. Renna
Chief Executive Officer
CRE Finance Council

CRE Finance Council, Written Testimony Exhibit B
HFS Capital Markets Subcommittee, February 26, 2014

CRE Finance Council
The Voice of Commercial Real Estate Finance

October 30, 2013

The Honorable Ben S. Bernanke
Chairman, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Mary Jo White
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Thomas J. Curry
Comptroller of the Currency
U.S. Department of the Treasury
250 E Street, SW
Washington, DC 20219

The Honorable Jacob J. Lew
Secretary
United States Department of the Treasury, and
Chairman, Financial Stability Oversight Council
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Proposed Rule, Credit Risk Retention
OCC Docket No. 2013-0010; Federal Reserve Docket No. R-1411; FDIC RIN 3064-AD74; SEC File No. S7-14-11; FHFA RIN 2590-AA43

Ladies and Gentlemen:

The Commercial Real Estate Finance Council ("CRE Finance Council" or "CREFC") appreciates the opportunity to comment on the proposed rule for credit risk retention for asset-backed securities,[1] which was jointly published by your respective agencies (collectively, the "Agencies")

[1] Proposed Rule, Credit Risk Retention, 78 Fed. Reg. 57928 (Sept. 20, 2013) (hereafter, "NPR" or "Proposed Rule").

pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] This proposed rule follows the prior proposed rule of 2011.[3]

The CRE Finance Council is the collective voice of the entire $3.1 trillion commercial real estate finance market. Its members include all of the significant portfolio, multifamily, and commercial mortgage-backed securities ("CMBS") lenders; issuers of CMBS; loan and bond investors such as insurance companies, pension funds, specialty finance companies, REITs and money managers; servicers; rating agencies; accounting firms; law firms; and other service providers.[4] Our industry plays a critical role in the financing of office buildings, industrial complexes, multifamily housing, retail facilities, hotels, and other types of commercial real estate that help form the backbone of the American economy.

Our principal functions include setting market standards, facilitating the free and open flow of market information, and education at all levels. Securitization is one of the essential processes for the delivery of capital necessary for the growth and success of commercial real estate markets. One of our core missions is to foster the efficient and sustainable operation of CMBS. To this end, we have worked closely with policymakers to educate and inform legislative and regulatory actions to help optimize market standards and regulations.

Considering the important role that commercial real estate plays in the economy and the critical function that securitization serves in commercial real estate, we must emphasize at the outset that the stakes in this rulemaking process are very high. Indeed, the CMBS market suffered a traumatic disruption due to the financial crisis in 2007-2009. Volume fell from an all-time high of $229 billion in 2007 to a low of just $3 billion in 2009. The recent recovery in new CMBS issuance and trading values for vintage CMBS is not the result of investor amnesia or apathy, but the product of an industry-wide process of self-assessment, restructuring and implementation of materially enhanced standards.

A few examples as a result: Loan-to-Value ratios have dropped from 2005-2007 levels; credit support across all bond classes from AAA down to BBB- has risen materially; and appraisal reductions are now accounted for in determining controlling class rights. As discussed in more detail below and in Appendix 1, the CRE Finance Council spearheaded industry efforts to bolster underwriting, disclosure, accountability and transparency for investors, resulting in greater confidence and increased demand for CMBS.

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[2] Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), Pub. L. No. 111-203, §941(b), 124 Stat. 1376, 1896 (2010) (creating Securities Exchange Act § 15G (i)(2)).

[3] Proposed Rule, Credit Risk Retention, 76 Fed. Reg. 24090 (Apr. 29, 2011) (hereafter, "Prior NPR" or "Prior Proposed Rule").

[4] A complete CRE Finance Council Membership list is attached at Appendix 12.

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An important feature of the domestic CRE market is its diversity of financing sources. Representing roughly 20 percent of outstanding CRE financings as of September 30, 2013,[5] non-Agency CMBS provides liquidity to a comprehensive range of property sizes, types and geographies. Conduits fund stabilized properties in tier I markets, but they also fill gaps by lending in other markets, as well. Within the Single Asset Single Borrower segment, CMBS can access a wide investor base capable of financing transactions that can be too large for balance sheet lenders. CMBS is a significant source of financing, a competitive lender and one that fills certain gaps.

CMBS is an integral component of CRE lending – and therefore supports the overall health of the economy as a whole – by adding access to capital and diversification to the lender and investor base beyond what portfolio – or balance sheet – lending can contribute on its own to the sector. CMBS accomplishes this in part by allowing for the efficient tailoring of investment risk and yield requirements to the specific goals and desires of the entire range of potential institutional investors. If the regulatory regime results in limiting a vibrant CMBS market, the liquidity of insured depositories and other regulated institutions would be reduced unnecessarily and, in all likelihood and at the same time, real estate risk would shift from the capital markets and become more concentrated on bank and life insurance company balance sheets. Failure to achieve a balanced and workable set of risk retention rules thus could be counterproductive and could significantly restrict the overall amount of capital that is available in the commercial real estate finance market, leading to increased costs for CRE borrowers and, ultimately, may be a drag on the economy and job growth.

We also urge the Agencies to bear in mind that these risk retention rules must not be developed in isolation. As the Federal Reserve Board cautioned in its recommendations to Congress on risk retention, the totality of the regulatory changes that are being put into motion – including the various new disclosure and credit rating agency reform provisions included in the Act, the securitization accounting changes that must be effectuated, the new Basel capital requirements regime, and European Union Solvency II risk retention requirements – should be considered to develop a rational overall framework for appropriate alignment of risk:

> [R]ulemakings in other areas could affect securitization in a manner that should be considered in the design of credit risk retention requirements. Retention requirements that would, if imposed in isolation, have modest effects on the provision of credit through securitization channels could, in combination with other regulatory initiatives, significantly impede the availability of financing. In other instances, rulemakings under distinct

[5] *See* http://www.sifma.org/research/statistics.aspx.

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sections of the Act might more efficiently address the same objectives as credit risk retention requirements.[6]

The CRE Finance Council and its members believe that the basic retention regime outlined in the Proposed Rule can be the basis for a viable set of retention rules within the overall regulatory framework. We recognize that extraordinary thought and work went into the development of the Proposed Rule, and we particularly appreciate the Agencies' efforts to craft provisions that seek to address the unique characteristics of the CMBS market and that incorporate many of the suggestions made in the comment letter we submitted on the initial proposal on July 18, 2011 ("Prior Comment Letter.").

In promulgating the Proposed Rule, the Agencies made clear that they are attempting "to minimize the potential for the proposed rule to negatively affect the availability and costs of credit to consumers and businesses."[7] The CMBS retention rules – as currently proposed – appear to impose a cost on borrowers that is projected to be from 40 to 50 basis points for conduit transactions,[8] if issuers and sponsors apply rigorous risk-based pricing to the retained interests. This marginal cost translates into an increased cost burden on commercial property owners of 8 to 10 percent at current market borrowing rates of approximately 5-percent.

In the CMBS space, the Agencies also made clear that they are endeavoring "to balance two overriding goals: (1) not disrupting the existing CMBS third-party purchaser structure, and (2) ensuring that risk retention promotes good underwriting."[9] The comments set forth below are intended to build on and improve the Proposed Rule to ensure that it does achieve the appropriate balance in the CMBS space by minimizing unnecessary borrower costs and by better preserving existing CMBS third-party purchaser structures without undermining the underwriting integrity risk retention it is intended to promote.

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[6] Board of Governors of the Federal Reserve System, Report to Congress on Risk Retention (October 2010), at 84 (available at http://federalerserve.gov/boarddocs/rtpcongress/ securitization/riskretention.pdf).

[7] 78 Fed. Reg. at 57934.

[8] If a bank issuer/sponsor uses its own regulatory capital returns as the basis for pricing the Eligible Horizontal Residual Interest ("EHRI"), it is likely that the institution would start with a minimum return requirement of 12.5 percent (the simple average of tier 1 common capital ratios reported by the six largest US banks at the corporate level in 2012). This equates to a minimum hurdle of approximately 37.5 basis points. The issuer would need to receive an additional margin on top of this corporate-wide return measure, especially given the nature of the credit and liquidity risks inherent in the EHRI. If assuming a 13-15 percent return is required of the EHRI, then the marginal cost to the borrower of risk retention is estimated to be approximately 40-50 basis points.

[9] 78 Fed. Reg. at 57958.

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Under the terms of the Act, the risk retention requirements will not go into effect until two years after publication of final rules for asset-backed securities other than those backed by residential mortgages.[10] The CRE Finance Council respectfully submits the following comments that we believe will both meet the intent of the regulations and provide workable solutions for the CRE finance marketplace. We look forward to continuing to work with the Agencies during the rulemaking process.

INTRODUCTION & EXECUTIVE SUMMARY

The CRE Finance Council shares the Agencies' goals of promoting sound underwriting while at the same time preserving the basic CMBS market structure that has been successful and resilient over time, and to do so in a way that minimizes the negative impact on the cost and the availability of credit. During the legislative debates and when the CRE Finance Council first had the opportunity to comment on the Prior Proposed Rule in 2011, we embraced the core risk retention construct and our efforts were focused on ensuring that the details of the proposed risk retention rules worked for CMBS structures.

Since the crisis, CMBS market participants also have sought to improve industry practices outside of the formal regulatory rulemaking process. As part of its core mission, the CRE Finance Council works closely with its members, including the largest principal CMBS issuers, B-Piece Buyers and servicers, and the leading investors in CMBS and portfolio CRE loans, to establish best practices. In response to the crisis, CRE Finance Council members developed and enhanced several sets of documentation and best practices standards, which materially add to market transparency, standardization and efficiency including:

(1) Model Representations and Warranties;
(2) Underwriting Principles;
(3) Refinements of Annex A;
(4) New Loan Modification, and Loan and REO Liquidation Reports; and
(4) Version 7.0 of the CREFC Investor Reporting Package ("IRP")™ for ongoing disclosures and surveillance by investors

all of which we previously have shared with the Agencies and the Department of the Treasury. The CRE Finance Council also has been actively engaged in an initiative to standardize certain basic terms of CMBS Pooling and Servicing Agreements ("PSAs"), as consistency in these terms across transactions will serve as an added transparency enhancement. We intend to modify the model PSAs to incorporate the Proposed Rule requirements when they are finalized to the extent that is

[10] *See* The Act at §941(b), 124 Stat. at 1896.

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appropriate.[11] We believe that increased transparency, standardization and efficiency also should collectively improve underwriting integrity and these improvements thus are designed to advance investor interests and implement one of the core objectives of the Act.

Similarly, the CRE Finance Council worked with its members to build a broad consensus on the changes we collectively believe are necessary to ensure that the Proposed Rule achieves the Agencies' objectives – interest balancing, risk mitigation and minimizing market impact. The CRE Finance Council operates member forums that are organized around each of our core market constituencies: Investment-Grade Investors; B-Piece Investors; Issuers; Servicers; High Yield Investors; and Portfolio Lenders. Each forum engaged in an extended set of discussions to gather feedback and to propose modifications to the Proposed Rule. The discussions were supplemented by a set of targeted surveys that were sent only to the members of the Investment-Grade Investor forum because its membership is large, diffuse, and purchases the largest segment of CMBS new issue bonds.[12] That process was overseen and moderated by the CRE Finance Council's Policy Committee, which is comprised of the leaders of each of the forums and certain members of CRE Finance Council's Executive Committee.

What emerged from these discussions was a strong consensus across all CRE Finance Council constituencies in support of the suggested modifications to the Proposed Rule outlined below. These modifications are all designed to support (rather than displace) the proposed risk retention framework in the CMBS space, and to better ensure that this framework more fully satisfies both the Agencies' and the Act's objectives. Given our broad and diverse membership, unanimity is rarely achievable. Nonetheless, all of the suggested modifications have, at a minimum, the majority support of each of CREFC's member constituencies. In some cases, the support is unanimous. In instances in which there was a range of opinions above a threshold majority, we have defined the range of recommended modifications. The CRE Finance Council's recommendations seek to provide practical solutions for the CMBS marketplace while meeting the goals of the proposed risk retention structure.

The following summary of our core suggestions also serves as a table of contents of our Rule Analysis & Proposed Recommendations; all **bolded and underlined** titles and letter section references

[11] A more detailed summary of these efforts is attached as Appendix 1.

[12] The CREFC surveys were conducted throughout October 2013 as part of CREFC's Proposed Rule deliberations. CREFC staff and the leadership of the IG Investor Forum crafted and approved background information and each question. All surveys were sent to the entire CREFC IG Investor Forum (which formally is called the CREFC "IG Bondholders Forum") and to any other CREFC members who were identified as "IG Investors" in CREFC's member database. Respondents include investors from large life companies, banks, mutual funds, pension funds and private investors, among others. There are 61 company members of the Forum; we show response rates in conjunction with the different survey results referenced below. A copy of the survey and tabulated results also is included as Appendix 11.

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below and throughout the letter also function as hyperlinks if you are viewing these materials electronically:

- **A Meaningful Closing Date Cash Flow Test (Part A.2; Page 12):** As currently proposed, CMBS B-piece retention investments always will fail the requisite Closing Date Projected Cash Flow Rate/Projected Principal Repayment Rate test for two reasons:

  (1) The vast majority of the loans included in CMBS pools (and of all commercial real estate loans whether securitized or not) have no- or low-amortization, prepayment lockout, yield maintenance and/or defeasance structures that result in very low principal repayment rates prior to maturity; and

  (2) B-Piece Buyers obtain their bond positions at a significant discount from par value (because they are in the horizontal first-loss position). As such, the Closing Date Projected Cash Flow Rate (which is based upon the fair value of the "Eligible Horizontal Residual Interest" ("EHRI")) will de facto always be higher than the Closing Date Projected Principal Repayment Rate starting on Day 1.

  For the calculation to work in the CMBS context, it should be rewritten to ensure that (1) the B-Piece Buyer's cash flow as a percentage of the B-Piece Buyer's notional Unpaid Principal Balance ("UPB") will not exceed (2) the cash flow received by the remaining ABS interests as a percentage of their notional UPB. This formulation is consistent with the objective of ensuring that the EHRI does not receive more than its pro rata share of total cash flows from the securitization trust. All CRE Finance Council constituencies unanimously support this recommendation; if the calculation is not modified at least for CMBS/B-Piece Buyer retention, it will completely undermine the viability of CMBS B-Piece retention.

- **Single Borrower/Single Credit Exemption[13] (Part B.1; Page 13):** Single borrower/single credit ("SBSC") deals involve only one loan (or a pool of cross-collateralized loans that essentially function as one loan). Historically, there has been no role for B-Piece Buyers in SBSC transactions; transparency is extremely high because granular loan details are reported to potential investors; and their loss

[13] Re-named from the Proposed Rule's term, "single asset single borrower". The CRE Finance Council definition is intended to exclude an extremely small subset of slightly riskier transactions that technically involve more than one borrower. Also, this definition is intended to include pools of multiple loans only when all loans are cross collateralized.

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experience has been exceedingly low – well below that of conduit CMBS and other asset classes – and has been more on par with non-securitized corporate bonds. Furthermore, because these transactions effectively contain only one loan, it is much easier for investors to evaluate the credit of the transaction before investing. There is a strong consensus among all CRE Finance Council members – including a majority consensus among the Investment-Grade Investors ("IG Investors") whom the retention rules are designed to protect – that these SBSC deals do not present the issues that the Proposed Rule is intended to address and therefore should be completely exempt from the risk retention rules.

- **Modified Definition and Parameters for QCRE** **(Part B.2; Page 16):** To ensure that the qualified commercial loan exemption is an effective mechanism that can be used in the CMBS market, there is broad consensus among CRE Finance Council members – including IG Investors – that the QCRE loan requirements be modified to:

  (a) remove maturity term restrictions (in place of the minimum 10-year term requirement);

  (b) allow for 30-year instead of 25-year amortization schedules;

  (c) allow interest-only loans with a loan-to-value ("LTV") ratio of 50 percent or less to qualify as QCRE loans;

  (d) remove the lower LTV cap for loans that were appraised utilizing a lower capitalization rate.

  The historical loss performance for 5 and 7-year loans and interest-only loans actually is better than for 10-year loans and we can identify no rational basis for excluding the shorter-term or interest-only loans. Similarly, we can identify no supportable basis for requiring a 25-year amortization schedule for most QCRE loans. Importantly, both the shorter QCRE loan restrictions and an expedited amortization schedule will have the unintended result of driving the highest quality CMBS loans out of the CMBS market, thereby effectively weakening the overall CMBS loan pool and unnecessarily raising borrowing costs for all CMBS borrowers. The cumulative loss data bears this out historically because – in the aggregate – the cumulative loss experience for loans that satisfy the proposed CREFC QCRE loan parameters is lower than the cumulative loss experience under the parameters as proposed by the Agencies.

  This same logic also applies to loans that would be excluded by the lower LTV cap restriction when a property is appraised with a lower capitalization rate. Extensive

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industry analysis bears out the concern that this will result in the exclusion of loans secured by the best properties from CMBS pools because it is those properties that qualify for the lower cap rate treatment.

- **Senior/Subordinate Structure for B-Piece Retention** **(Part C.1; Page 21):** The Proposed Rule allows a third-party purchaser (or B-Piece Investor or B-Piece Buyer) to own the EHRI as the requisite CMBS retention and it allows that EHRI investment to be purchased by one or two such third-party buyers. If there are two buyers, however, the Proposed Rule requires that they must hold their positions on a *pari passu* basis. Basing the retention obligation on 5-percent of the fair value of a deal rather than 5-percent of the credit risk of the deal almost doubles the amount of retention for CMBS and the "thickness" of the traditional B-Piece investment and, in many cases, will require retention of investment-grade securities. Allowing two buyers to share the retention obligation is helpful, but the *pari passu* requirement seems to create unintended roadblocks for investors, especially in light of the increased retention obligation. In particular, the requirement of *pari passu* sharing of retention obligations (i) reduces flexibility in that CMBS cannot structure a product that meets B-Piece Investor needs; (ii) dampens the market for B-Piece Buyers who want to target their investment to a particular level of the debt stack, e.g. second loss piece vs. first loss piece; (iii) raises the challenge of assigning control between two unrelated B-Piece Buyers who would consequently have joint control if they are *pari passu* (rather than having tranched control commensurate with their investment as has historically been the case), and may not be able to agree on various control issues that arise throughout the deal causing decision making deadlocks and delay in the servicing of the loans and an impediment to borrowers desiring to obtain various consents; and (iv) needlessly restricts the potential liquidity of these positions even after the mandatory 5- year hold period has expired due to the lack of flexibility.

  To attract B-Piece Investors with sufficient capital and the appropriate capabilities, the EHRI also should be allowed to be held in a senior/subordinate structure, provided that both the senior and subordinate holders satisfy all of the obligations and requirements imposed on B-Piece Buyers to satisfy the CMBS retention requirements and provided further that the subordinate horizontal first-loss position must bear at least one-half of the requisite overall EHRI investment (2.5-percent of the fair value of the deal). Without this flexibility, IG Investors, many of which are unable to own non-investment grade bonds, have expressed concern that they will be locked out of part of their traditional market share. In addition, B-Piece Buyers recognize that their value proposition will be challenged by the need to purchase credits that fall higher in the credit stack. Finally, the senior portion of this proposed senior/subordinate B-Piece structure will be an attractive investment to experienced CRE debt investors whose

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investment return thresholds are lower than for traditional B-piece investors, which can reduce the overall weighted cost of capital of a CMBS transaction and generate lower borrowing costs to commercial property owners. In sum, the *pari passu* requirement reduces both IG and B-Piece Investors' ability to acquire bonds that are consistent with their respective mandates and restrictions (a fundamental benefit of securitization), frustrates formerly obvious lines of control, and creates perverse structuring consequences. For these reasons, CRE Finance Council members overwhelmingly support this recommendation.

- **Appraisal Reduction Amount Calculation for Operating Advisor Consultation Rights** **(Part C.2; Page 24):** The Proposed Rule requires that Operating Advisor consultation rights attach when the EHRI has a principal balance of 25 percent or less of its initial principal balance. In that regard, CREFC's IG Investors Forum unanimously has proposed that this calculation be based on the formal Appraisal Reduction Amount, i.e. that the Operating Advisor consultation rights attach when the EHRI has an outstanding principal balance, as notionally reduced by any appraisal reductions then allocable to the class or classes (or portions thereof) that constitute the EHRI, that is equal to or less than 25 percent of its initial principal balance. This is current market practice and the CRE Finance Council's members support this recommendation unanimously.

- **Increase in the Voting Quorum to Replace the Special Servicer** **(Part C.3; Page 24):** CRE Finance Council members agree that the 5-percent quorum required for a vote to replace the special servicer based on an Operating Advisor recommendation is too low. There is strong consensus that this threshold should increase to a quorum requirement of at least 20 percent, with a minimum of at least three investors participating in the vote. In addition, a significant portion of the CREFC membership (not only special servicers) believes that the quorum requirement should be materially higher, closer to two-thirds of total investors. Imposition of this quorum requirement would still be a significant decrease from current market practices. Currently, deal documentation generally specifies that special servicers can be replaced only if a very high percentage of all bondholders (60-75 percent) affirmatively vote for replacement while the B-Piece Buyer remains in control. In the event the B-Piece Buyer is no longer in control, voting thresholds for replacement currently average roughly 50 percent or more of all bondholders.

- **B-Piece Buyer Affiliations** **(Part C.4; Page 26):** The Proposed Rule prohibits a third-party purchaser of the EHRI from being affiliated with a lender that contributes more than 10 percent of the loans to that deal. Several prominent CMBS B-Piece Buyers have originator affiliates and the prevailing belief among CRE Finance Council

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members is that the strongest deals from an underwriting perspective are those to which a B-Piece Buyer affiliate has contributed a large pool of loans. B-Piece Buyer incentives are perfectly aligned with those of the other investors to those deals. There is no compelling support for precluding B-Piece Buyers from investing in a deal to which its affiliate has contributed more than 10 percent of the loans, especially given the fact that such investments are wholly aligned with the fundamental objectives underlying the risk retention regime.

- **Additional Operating Advisor Disclosure** **(Part C.5, Page 26):** The Proposed Rule requires disclosure of certain information related to the transaction, including details surrounding the Operating Advisor's qualifications. Additionally, the Proposed Rule sets out the goal of Operating Advisor independence. CRE Finance Council members support these provisions, and there is consensus, especially amongst the IG Investors, to require additional disclosures related to the Operating Advisor's material conflict of interest or potential conflict of interest, and related to Operating Advisor compensation.

- **Technical Recommendations** **(Part D; Page 28):** We also have included several recommendations that are more technical in nature but that we believe are necessary to ensure that the Proposed Rules operate as intended.

Where appropriate and as indicated below, the recommendations are supported by formal data analyses. We are happy to provide additional detail on the data analyses that were done and to discuss the analyses to the extent either or both would be helpful to the Agencies.

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PROPOSED RULE ANALYSIS and RECOMMENDATIONS

A. Basic Retention Issues

1. Retention Flexibility & The Elimination of the Premium Cash Capture Reserve Account ("PCCRA")

At the outset, the CRE Finance Council is very supportive of all of the structural flexibility embedded in the Proposed Rule, including clarifying that L-shaped retention can be shared between a sponsor and a third-party purchaser and that the allocation of retention can be executed in any way the bearers of the retained interests choose as long as they collectively satisfy the 5-percent fair value retention obligation. As part of this flexibility, the CRE Finance Council agrees with the Agencies' decision to eliminate the PCCRA. In our prior comment letter, we discussed at length the ineffectiveness of the proposed PCCRA as applied to the CMBS market, and we were pleased to read that the Agencies have removed the requirement from the Proposed Rule.[14]

2. The Payment Date Cash Flow/Principal Repayment Test Must Be Modified

The CRE Finance Council agrees that a cash flow test should be an integral part of the risk retention process. We also support the Agencies' efforts to impose a test that will not seek to disrupt the CMBS market, while, at the same time, being applied to various markets. Most, if not all, CMBS transactions would, however, fail the test as currently proposed.[15]

As illustrated in the spreadsheet attached as Appendix 2, the current proposal is not viable for the CMBS market. As a general matter, in the CMBS market, the EHRI will not receive a disproportionate amount of cash flow relative to its pro rata share of unpaid principal balance ("UPB"). The Proposed Rule's use of fair value in the calculation – as opposed to face value – would prevent B-Piece Buyers from being able to buy the B-Piece at a discount. It is this discount, however, that is essential to holding the EHRI position in the CMBS marketplace; B-Piece Buyers assume that they will absorb some losses. The higher yield the B-Piece Buyers are able to realize is, however, based on this very willingness to absorb losses; this goes to the essence of risk/reward investing in the CMBS marketplace, without which no investor – including no B-Piece Investor – would be willing to accept the greater risk. Additionally, the discount on the subordinate bonds does not prevent the IG Investors from receiving their proportionate share of the cash flows. In order to achieve these objectives, an "apples-to-apples" comparison of cash flows to notional UPB is required.

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[14] *See* 78 Fed. Reg. at 57934.

[15] Proposed Rule § __.4(a), 78 Fed. Reg. at 58026.

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Because all fair-valuation calculations must be disclosed, investors will be informed of the amount the B-Piece Buyer paid for its position; the revised calculation will not disable a typical CMBS B-Piece investment unless there are other streams of investment payments not included in the typical coupon payments and that should be in line with the Agencies' objective in requiring use of the calculation.[16] Failure to modify the formula – or imposition of the requirement that CMBS B-Piece Buyers must comply with the Alternative EHRI Proposal outlined in the rules[17] – would constitute a significant change to the economics of CMBS B-Piece investments, and would therefore jeopardize the viability of the CMBS/B-Piece model completely. This would be counter to the Agencies' expressed intent to adhere to current CMBS market practices as much as possible.[18] The CRE Finance Council's member constituencies unanimously support the recommended formula modifications.

CRE Finance Council Recommendation: The Proposed Rule should adjust the language to reflect that, on any distribution date, the amount of cumulative cash flow received by the EHRI holder as a percentage of face value (determined as of the date of issuance) of the EHRI will not exceed the cumulative amount of cash flow received by the rest of the ABS classes measured as a percentage of the face value (determined as of the date of issuance).

B. QCRE Issues

1. Exempt Single Borrower/Single Credit Deals

By design, the Proposed Rule includes only a very narrow exemption from risk retention for loans that will qualify as "Qualifying Commercial Real Estate" ("QCRE") loans. In the discussion, the Agencies explained that they did not believe that "non-conduit" CMBS transactions warranted any special treatment under the QCRE loan rules or otherwise should qualify for any special exemption;

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[16] The Agencies assert that "the purpose of the restriction is to prevent sponsors from structuring a transaction in which the eligible horizontal residual interest is projected to receive such a disproportionate amount of money that the sponsor's interests are no longer aligned with investors' interests." 78 Fed. Reg. at 57939. As long as the B-Piece Investor does not receive more money than its bond ownership – based on par value – would allow, the B-Piece Investor's interests remain aligned with those of other investors in the deal. And – perhaps equally important – the B-Piece deal proceeds are consistent with market expectations of what they should be given the nature of their position in the deal.

[17] *See* 78 Fed. Reg. at 57941.

[18] *See, e.g.,* 78 Fed. Reg. at 58013 (the Agencies "understand[] that the current market practice regarding risk retention in the CMBS market is largely in line with the agencies' proposed rules. The proposed rules allow for the continuation of current risk retention market practice for CMBS in the form of the B-Piece retention with additional modifications to the current practice."); *id.* at 58014 ("To the extent that the proposed rule allows the current market practice to continue with minor change in the size of the horizontal piece, and most market participants follow it, both costs and benefits of the proposed rule are expected to be minimal with the exception of the requirement of the appointment of the independent operating advisor discussed above.")

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although the Agencies acknowledged that "these transactions allow fuller asset-level disclosure in offering documents and could allow prospective investors the opportunity to review each loan in the pool, the agencies do not believe that this fact alone is sufficient grounds to satisfy the exemption standards of section 15G of the Exchange Act."[19]

Single borrower/single credit CMBS ("SBSC") are a specialized sub-set of the "non-conduit" CMBS market and the underlying loans are unique both within the "non-conduit" CMBS space as well as in the broader CMBS market. Over the next 7 years, more than $25 billion of previously issued SBSC bonds are scheduled to mature.[20] SBSC transactions are highly transparent relative to conduit pools. They involve only a single loan to a single borrower or a pool of loans (that may be to several affiliated borrowers) that are all cross-collateralized with one another such that – functionally – they operate as a single loan or "credit." As such, they should qualify for special treatment for several reasons.

First, SBSC deals have proven to be extremely low-risk as they have performed exceptionally well over time by all standards. Over the last sixteen years, cumulative losses across the entire spectrum of SBSC deals have been just 25 basis points or .25 percent.[21] SBSC deals thus have been much safer than the overall conduit CMBS market in which losses have been 2.79 percent over that same period,[22] and than the CMBS loans that would have satisfied the proposed QCRE loan criteria which experienced an aggregate cumulative loss rate of .74 percent over that same period.[23] In comparison, the cumulative loss rate for non-agency Residential Mortgage-Backed Securities loans that would have satisfied the proposed Qualified Mortgage retention exemption provisions over the same period was 6.41 percent.[24]

SBSC performance also compares favorably to corporate debt securities. SBSC transactions performed comparably well in stress periods to corporate bonds over a 31-year period in terms of

[19] 78 Fed. Reg. at 57976.

[20] See Appendix 3 (showing SBSC and other large loan maturation schedule by year).

[21] *See* Appendix 4 (illustrating same).

[22] *See id.*

[23] *See* Appendix 6 (showing the number of loans to be considered QCRE under the Proposed Rule and the CRE Finance Council recommendations).

[24] JP Morgan provided this calculation.

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ratings transitions.[25] When evaluating loss severity, SBSC deals significantly outperformed even the highest caliber corporate debt segment – first lien loans.[26]

Second, SBSC deals are highly transparent and truly target investors that are looking for exposure to a specific asset. An investment in an SBSC deal generally involves extensive due diligence on one or more related commercial real estate properties that directly or indirectly represent the credit of a single sponsor and are evidenced by a single loan or a group of cross collateralized loans, as compared to a conduit transaction that requires due diligence on commercial real properties that secure as many as 100 or more mortgage loans representing the credit of 100 or more sponsors. Furthermore, SBSC transactions generally are offered only in the private placement market and only to "Qualified Institutional Buyers" under Rule 144A[27] and to "Institutional Accredited Investors" under Section 4(a)(2) of the Securities Act of 1933,[28] which also greatly expands the type and granularity of the data available to prospective investors.[29] This is because an investor in a single exposure necessarily requires extensive diligence and access to information. Accordingly, the level of disclosure included in offering documents and on investor information websites with respect to a SBSC transaction is highly detailed, with much disclosure provided regarding third-party reports, underwriting, reserves, cash management, cash flow analysis, major leases, asset specific risk factors, specifics on all material loan documents, etc. All of these factors mean that investors are in a position to fully evaluate the underwriting of an SBSC transaction and rely far less on the origination and underwriting of the transaction sponsor in making their investment decision.[30]

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[25] *See* Appendix 5 (comparing the SBSC and corporate debt rating transitions).

[26] *See* Appendix 4 (comparing SBSC and corporate debt cumulative loss rates); *compare also* Tad Philipp, et al., "US CMBS: Single-Asset/Single-Borrower Mid-Term Report Card Meets Expectations," Moody's Investors Service, Special Comment (Oct. 21, 2013), *at* https://www.moodys.com/research/US-CMBS-Single-AssetSingle-Borrower-Mid-Term-Report-Card-Meets--PBS_SF345417 (by subscription only); Sharon Ou, et al., "Annual Default Study: Corporate Default and Recovery Rates, 1920-2012," Moody's Investors Service, Special Comment (Feb. 28, 2013), *at* https://www.moodys.com/Pages/GuideToDefaultResearch.aspx (by subscription only).

[27] *See* 17 CFR 230.144A.

[28] *See* Securities Act of 1933 § 4(a)(2), 15 U.S.C. § 77d(2).

[29] In a publicly offered transaction, if any loan-level data is provided to any investor by either the issuer or underwriter, the information will be a free-writing prospectus and generally will need to be filed in accordance with Rule 433 issued under the Securities Act of 1933. *See* 17 C.F.R. § 230.43. Because the filing requirement could conflict directly with privacy law restrictions against public disclosure of borrower personal financial information, and because there also may be confidentiality provisions in the loan documents that prevent public filing of such information, much more limited information is provided to investors in public classes. Loan-level data can, however, be given to prospective investors in privately offered classes and such information need not be filed as a free-writing prospectus.

[30] On this point, one of the only SBSC transactions that incurred losses was the Extended Stay Hotels SBSC transaction of 2007. Reportedly, only a small proportion of the bonds sold and mostly at a steep discount, because

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Third, imposing a retention obligation on SBSC deals is likely to impose an additional cost of credit on potential borrowers. In this very competitive space, this is likely either to cause potential borrowers to flee the market completely[31] or to act as their own issuance sponsor so that they themselves can bear the "retention" obligation directly. Neither of these results is optimal. From a regulatory perspective, borrowing activity will move to a relatively less transparent sector (assuming that risk retention and Regulation AB requirements will be enforced). From the investor perspective, they will either lose quality loans in which to invest or they will lose the integrity that a traditional SBSC bond issuance has evidenced.

It is for these reasons that the CRE Finance Council IG Investor community expressed a strong consensus supporting the blanket exemption for SBSC transactions, with 77.4 percent of the 31 IG Investors responding to the CRE Finance Council survey affirmatively favoring the exemption and another 6.5 percent affirmatively expressing no opinion on exemption; the rest of the impacted CREFC member constituencies – Issuers, B-Piece Buyers, Servicers – unanimously support the exemption.

CRE Finance Council Recommendation: Exempt single borrower/single credit issuances from the risk retention rules. An exempt "Single Borrower/Single Credit" transaction should be defined as "A securitization of a single commercial real estate loan or a group of cross-collateralized commercial real estate loans that represent(s) the obligation of one or more related borrowers, and that is secured, or collectively secured as the case may be, by one or more commercial properties that are directly or indirectly under common ownership or control."

2. The Parameters for QCRE Loans Should Be Modified

As currently drafted, the parameters of the QCRE loan retention exemption are exceedingly restrictive. Since 2003, only 7.71 percent of the CMBS CRE loans would have qualified as QCRE loans under the parameters included in the Proposed Rule and those loans constituted only 3.12 percent of the CMBS loan principal balance over that same time frame.[32] Some CMBS market participants

investors were able to identify the weaknesses of the deal. *See* Al Yoon & Nancy Leinfuss, "Extended Stay seeks to break up $4.1 billion CMBS," Reuters (June 16, 2009), *at http://www.reuters.com/article/2009/06/16/us-extendedstay-debt-sb-idUSTRE55F72I20090616*.

[31] There is evidence that the CMBS market already is losing some SBSC deals to corporate debt issuances. Harrah's recently refinanced a large loan in the corporate bond market and Hilton is in the process of doing the same. *See, e.g.*, Tim Cross, "Leveraged Loan Issuance Takes Breather As Market Digests Dell, Hilton," Forbes, *at* http://www.forbes.com/sites/spleverage/2013/09/27/leveraged-loan-issuance-takes-breather-as-market-digests-dell-hilton/ (Sept. 27, 2013); Beth Jinks, "Harrah's to Extend $5.5 Billion CMBS Maturities," Bloomberg (March 8, 2010), *at* http://www.bloomberg.com/apps/news?pid=newsarchive&sid=adHk3v2GAvgc.

[32] *See* Appendix 6 (showing the number of loans to be considered QCRE under the Proposed Rule and the CRE Finance Council recommendations).

fear that imposing such restrictive conditions on retention exemptions for CMBS ultimately will result in weaker CMBS loan pools as the higher quality loans gravitate to other markets (which may not have sufficient capacity) because of the higher cost of borrowing that is expected to result from the imposition of the retention obligations. As noted at the outset, CMBS market participants have estimated that the retention obligations ultimately will cost borrowers from 40-50 additional basis points to access CMBS credit. In today's market, this would constitute increased costs of borrowing that ranges from 8 to 10 percent.

In addition to the SBSC exemption supported by all CREFC constituencies, there also is a strong consensus among CREFC members that the following four QCRE loan requirements should be modified:

(1) There should be no QCRE minimum loan term requirement (rather than the 10-year term required under the current proposal);

(2) The requisite amortization schedule should be allowed to be 30 years for all QCRE loans;

(3) Interest-only loans with Loan-to-Value ("LTV") ratios of 50 percent or less should be eligible for the QCRE loan retention exemption; and

(4) The lower allowable LTV ratio cap for loans that were appraised with capitalization ("cap") rates lower than 300 basis points more than current Treasury swap rates should be eliminated.

Each of these parameters is discussed, in turn, below. As a general matter, there is a broad consensus among all of the CRE Finance Council member constituencies in support of these changes to the QCRE loan parameters. This is in part because the cumulative loss percentage for loans that satisfy the CREFC proposed QCRE loan parameters is 0.57 percent compared to a cumulative loss ratio for loans that satisfy the currently proposed QCRE parameters that is almost 50 percent higher or 0.74 percent.[33] Some of CREFC's AAA IG Investors, however, generally oppose any liberalization of the QCRE loan parameters, primarily based on the concern that lenders will underwrite to the parameters to avoid or greatly minimize the required amount of retention.

At the same time, many members – including CREFC's Issuer, B-Piece Buyer and Servicer members, as well as some in the IG Investor community – believe that these recommendations do not go far enough and that the proposed debt service coverage ratio ("DSCR") and the LTV/CLTV ratio

[33] *See id*.

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caps exceed an optimal level. These constituencies argue that a very small percentage of CMBS loans will satisfy these requirements; that the level of these caps does not correlate with loan safety/soundness; and that this all is in stark contrast to the very liberal Qualified Residential Mortgage retention exemption under which the vast majority of residential mortgages will qualify. Although some IG Investors support liberalizing these QCRE loan requirements, others would prefer to further evaluate the appropriate level for these requirements at a later date, if at all.

(a) Loan Terms

The Proposed Rule acknowledges that "many commenters objected to the minimum length and amortization of QCRE loans" in the Prior Proposed Rule.[34] Despite the objections, the Proposed Rule includes a 10-year minimum maturity term for QCRE loans, under the belief that any shorter terms "may create improper underwriting incentives and not create the low-risk CRE loans intended to qualify for the exemption."[35] The Agencies, however, provide no data to support this assumption, and instead rely on the assumption that "an originator may focus only on a short timeframe in evaluating the stability of the CRE underlying the loan in an industry that might be at or near the peak of its business cycle."[36]

A review of the available data makes clear, however, that – historically – loans with 5-year or 7-year maturity terms have, as a class, been safer and better loans than 10-year term loans because losses on those loans have been less severe. Over a 16-year period from 1997 through July, 2013, for example, the cumulative loss rate for 5-year CMBS loans was 2.61 percent; for 7-year CMBS loans was 2.07 percent; and for 10-year CMBS loans was 2.87 percent.[37] For that reason, there was broad consensus across all CREFC constituent groups – including B-Piece Buyers, Issuers IG Investors (75 percent of the IG Investors responding to CREFC's IG Investor survey on this question voted in support) – to exclude a minimum maturity term for the QCRE loan requirements.

CRE Finance Council Recommendation: The definition of QCRE in the Proposed Rule should be modified to remove any minimum maturity term for QCRE loans.

[34] 78 Fed. Reg. at 57981.

[35] *Id.* at 57982.

[36] *Id.*

[37] *See* Appendix 7 (showing loan performance by term).

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(b) Amortization Schedule

The Proposed Rule had modified the amortization schedule required for QCRE loans from the Prior Proposed Rule by allowing for loans that amortize based on a 30-year amortization schedule for multifamily residential and a 25-year amortization schedule for all other loans. The Agencies maintain that this is an appropriate balance because "a longer amortization period reduces the amount of principal paid on the CRE loan before maturity, which can increase risks related to having to refinance a larger principal amount than would be the case for a CRE loan with a shorter amortization."[38]

A 30-year amortization schedule is the standard amortization schedule for CRE loans in both the securitized and the portfolio markets. Although we appreciate the increase in the allowable amortization period from 20 to 25 years, CRE Finance Council members – across all constituencies, including IG Investors, B-Piece Buyers and Issuers – are concerned that requiring the extra amortization will drive the highest quality borrowers out of the CMBS market, which will weaken CMBS loan pools. In addition, the expedited amortization will have only a negligible impact on the outstanding balance at the end of a 10-year term.

For example, on a $1 million loan at a 4-percent interest rate, the expedited amortization schedule will result in a higher payment of $500 per month, which will result in an overall reduction of the outstanding principal balance at the end of the loan term of only $60,000. CREFC members simply do not believe that the imposition of this requirement will result in better underwriting, but instead will result in a loss of the highest quality loans to other markets. For that reason, there was broad consensus across all CREFC constituent groups – including Issuers, B-Piece Buyers, and IG Investors (with 75 percent of the IG Investors responding to CREFC's IG Investor survey on this question voting in support) – to raise the minimum amortization schedule for non-interest-only loans to a 30-year amortization schedule which is consistent with current market practices.

CRE Finance Council Recommendation: The definition of QCRE in the Proposed Rule should be modified to allow for up to 30-year amortization schedules.

(c) Interest-Only Loans

The Proposed Rule bars interest-only loans from qualifying as QCRE loans. The Agencies state that "interest only loans or interest-only periods are associated with higher credit risk. If a borrower is not required to make any form of principal payment, even with a 25-year amortization

[38] 78 Fed. Reg. at 57981.

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period, it raises questions as to the riskiness of the loan, and would be inappropriate for qualifying CRE loan treatment."[39] The Agencies, however, do not provide any data to support this claim.

Interest-only loans that have a 50 percent or lower LTV ratio should be eligible for QCRE loan status provided that they satisfy the other QCRE loan requirements. A 65 percent LTV amortizing loan should have an LTV at the end of a 10-year term of approximately 55 percent. Allowing interest-only loans that satisfy that lower LTV ratio requirement at the outset should be viewed as the equivalent of an amortizing loan that starts with a higher LTV. From a risk perspective, interest-only CRE loans that had an LTV of 50 percent or less have experienced cumulative losses over the last 16 years of 2.59 percent compared to the cumulative losses of 10-year loans of 2.82 percent.[40] For these reasons, CRE Finance Council's member constituencies, including 73.9 percent of the 23 IG Investors that responded to the CREFC IG Investor survey on this question, all strongly support permitting interest-only loans with an LTV ratio of 50 percent or less to qualify as QCRE loans.

CRE Finance Council Recommendation: The parameters of the QCRE loan requirements in the Proposed Rule should be modified to allow interest-only loans with an LTV ratio of 50 percent or less to qualify.

(d) Capitalization Rate

The Proposed Rule requires that the maximum LTV and CLTV ratios be lowered by 5-percent if the CRE property collateral was appraised with a low capitalization (or "cap") rate that is less than the prevailing 10-year Treasury swap rate plus 300 basis points.[41] In support of this additional limitation, the Agencies assert that "[g]enerally, a low cap rate will inflate the appraised value of the CRE property and thus increase the amount that can be borrowed given a fixed LTV or CLTV."[42] Market experience runs counter to the Agencies' cap rate assumptions as generally the safest loans on the most mature properties in premier markets are appraised with the lower capitalization rates in part in recognition of the stability of those properties.[43] Again, the market concern here is that if the safest CRE loans will be subject to more aggressive LTV and CLTV ratio caps, the result will be the loss of such loans from CMBS loan pools and further erosion in the quality of loan included in CMBS loan pools. For these reasons, there is a strong consensus across all CREFC constituency groups to

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[39] 78 Fed. Reg. at 57982.

[40] *See* Appendix 7 (CMBS 10-year data) and Appendix 8 (interest-only data).

[41] Proposed Rule § __.17(a)(5)(ii), 78 Fed Reg. at 58041.

[42] 78 Fed. Reg. at 57982.

[43] *See, e.g.,* Appendix 9 (demonstrating peak performance of CMBS loan classes).

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eliminate the lower LTV/CLTV ratio caps on loans documented with appraisals that utilize lower cap rates.

CRE Finance Council Recommendation: Eliminate the lower LTV/CLTV ratio caps for loans documented with appraisals that utilize lower cap rates.

C. B-Piece/Operating Advisor Issues

Section __.7 of the Proposed Rule outlines the rules that apply when a third-party purchaser – or "B-Piece Buyer" in our parlance – bears the retention obligation. These rules require an Operating Advisor to have a formalized role in any CMBS deal that utilizes the B-Piece retention option. In our Prior Comment Letter, we generally expressed our support for these rules and we suggested a number of modifications designed to make the proposed retention scheme operate efficiently and be less disruptive of current CMBS market practices. We believe the Agencies' constructive approach to these issues in the Proposed Rule is a step forward, and we thank the Agencies for adopting several of the CRE Finance Council's recommendations for improving the B-Piece retention rules and for recasting the Operating Advisor role to be more in line with current marketplace practices and investor demands.

In that spirit, we have four additional suggestions that CREFC's members collectively believe are vital to fostering an efficient CMBS marketplace while not sacrificing investor protection in any way. If the Agencies are sincere in their interest in "increase[ing] the likelihood that third-party purchasers will assume risk retention obligations,"[44] it is imperative that these four recommendations be incorporated into the final rules.

1. Where two B-Piece Buyers hold the EHRI, a senior-subordinate structure should be allowed in addition to *pari passu*

Under the proposed rule, two third-party purchasers – B-Piece Buyers – can be used to satisfy the overall 5-percent of fair value risk retention requirements by purchasing the EHRI, provided that each of the purchasers' interests are held *pari passu*. According to the Proposed Rule, the reason for the *pari passu* requirement is so that "neither third-party purchaser's losses are subordinate to the other's losses."[45] The structure in the Proposed Rule is different from the Prior Proposed Rule, as the Agencies felt it was "appropriate" to provide for "additional flexibility" for retention in this space.[46]

[44] 78 Fed. Reg. at 57953.

[45] *Id*.

[46] *Id*.

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The challenge posed by the new Proposed Rule is one of capacity in the marketplace. Today, the B-Piece investor community typically purchases 6 or 7-percent of the par value of a deal at a discount that translates into a typical investment of 2.5 to 3-percent of the fair value of the deal proceeds. Under the proposal, B-Piece Investors will need to raise the capital to consume the expanded 5-percent fair value retention requirement. That level of retention will mean that bonds higher in the waterfall – bonds historically rated BBB-, BBB, and potentially even A- – will be swept into the EHRI retention position.

Presumably, the capital the B-Piece Buyer will need to raise is capital from investors that currently are buying lower-rated investment grade bonds. Appendix 10 illustrates the take-up rate that would have been necessary for each bond class tranche for several recent deals when the EHRI is based on a 5-percent fair value calculation. The mixing of capital sources that have different risk-return profiles presents significant logistical impediments that will yield market inefficiencies, cost and ineffectiveness.

Allowing the sharing of the retention obligation across two investors should at least partially address the potential capital shortfalls. Requiring the two investors to hold their positions in *pari passu*, however, only will create considerable pricing and structuring challenges. As noted above, the B-Piece Buyers will have to absorb positions that cross over from investment grade to non-investment grade bond classes, which presumes that the investor base will be willing and able to buy across the capital stack. Given legal, operational and fiduciary constraints, IG Investors essentially are never able to invest in the non-rated bond classes.

Institutional IG investors that seek the higher yield of the lower-rated bond tranches could potentially fill the gap, but they often are constrained by law or by fiduciary limitations. Because of their restrictions on investing in non-IG or unrated bonds, however, they will be unable to participate in a *pari passu* EHRI investment. As a result, the *pari passu* structure will reduce the overall amount of available CMBS capital and investors' ability to target their investments by risk. It also will reduce the ability to efficiently price each layer in the capital structure, thereby raising the weighted average cost of capital, and exposing the parties in the transaction to additional transactional costs.

A senior/subordinate structure is better aligned with current marketplace practice; would be a much more efficient structure overall;[47] and would adhere to the fundamental principle of risk-targeting that the CMBS market serves. It would allow institutional investors seeking the additional yield that the lower-rated bond classes provide to participate in the retention regime by investing in the rated component of the EHRI. Allowing a senior/subordinate risk retention sharing regime thus could preserve the basic capital structures that currently drive CMBS.

[47] Another 14 percent of the Investment-Grade Investors responding were neutral on this question and only 14 percent of those responding were opposed.

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In addition, providing for *pari passu* B-Piece ownership creates potential issues regarding the exercise of control over servicing decisions, the direction of certain matters regarding specially serviced loans, and the appointment and replacement of the special servicer. It is long-standing CMBS practice that the first-loss entity that owns the most subordinate class of certificates that, in general, has an outstanding principal balance equal to 25 percent or more of its original principal balance (as notionally reduced by appraisal reductions), has the right to appoint a controlling class representative who has such certain consent and direction rights. Tranching of the B-Piece classes has historically been commensurate with tranching of control. The requirement that B-Piece Buyers can only hold *pari passu* interests raises the challenge of assigning control between two unrelated B-Piece Buyers who, when given joint control, may not be able to agree on various consent issues that arise throughout the deal, thereby potentially causing decision making deadlocks and delays in the servicing of the loans and an impediment to borrowers desiring to obtain various consents in an efficient manner. Joint control by two investors has historically raised significant problems when drafting provisions in servicing agreements regarding the resolution of borrower requests in an efficient manner.

There is no evidence to suggest that allowing the holders of the retained EHRI to hold those positions either in *pari passu* or in a senior/subordinate structure would create additional risk for investors or to the CMBS marketplace in general. CRE Finance Council member constituencies are in overwhelming agreement that the senior/subordinate retention structure should be permissible provided that the initial senior EHRI holder also must satisfy all of the obligations and requirements imposed on the subordinated interest holder to make that a permissible retention alternative. After the five-year hold period, however, the senior EHRI position should be fully tradable without restriction to avoid the imposition of unnecessary liquidity restrictions on the marketplace. In addition, the subordinated EHRI holder – who would be the traditional B-Piece Investor in the standard CMBS structure – must retain at least half of the overall retention obligation, or 2.5-percent of the fair value of the deal. It is for these reasons that 67.7 percent of the 31 IG Investors responding to the CREFC survey voted in favor of allowing the senior/subordinate retention structure outlined above[48] and that there is unanimous support for these recommendations among the rest of the CREFC member constituencies.[49]

CRE Finance Council Recommendation: In addition to *pari passu* ownership, the Agencies should modify the Proposed Rule to allow for up to two EHRI investors also to hold their retention positions in a senior/subordinate structure <u>provided that</u> the junior EHRI investor must retain at least half of the requisite EHRI (or 2.5-percent of the fair value of the deal) and

[48] Another 12.9 percent of the responding IG Investors voted a neutral position on this question.

[49] CREFC's B-Piece Buyer and Servicer forums support shorter mandatory retention periods for the senior EHRI investor and relaxed application of the independent review of the credit risk of each securitized asset requirements but there was no consensus supporting these additional changes, especially among CREFC's Investment Grade Investor community.

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provided further that both initial EHRI investors must each independently satisfy all of the requirements and obligations imposed on a third-party purchaser bearing the retention obligation under Section __.7.

2. Operating Advisor consultation rights should be calculated using the Appraisal Reduction Amount

The CRE Finance Council appreciates that the Agencies have responded to the request in our Prior Comment Letter to limit the Operating Advisor consultation rights to when the B-Piece first loss position has deteriorated and has been reduced in value to a level that no longer meets a reasonable "skin in the game" standard. Accordingly, under the Proposed Rule, "the consultation requirement only applies to special servicers and only takes effect once the eligible horizontal residual interest held by third-party purchasers in the transaction has a principal balance of 25 percent or less of its initial principal balance."[50]

The current market practice for evaluating principal reductions is to require use of an appraisal. While it does not appear that the Proposed Rule would prohibit the use of an appraisal to evaluate the magnitude of any principal reduction, the rule does not specify the appropriate mechanism for determining the outstanding principal balance. All of CREFC's member constituencies unanimously support specifying use of appraisals to value outstanding principal balances.

CRE Finance Council Recommendation: The Agencies should clarify that the Appraisal Reduction Amount must be used to calculate principal reduction value to evaluate when the Operating Advisor consultation rights attach.

3. The voting quorum to replace special servicers should be raised

As stated above, the CRE Finance Council strongly supports the Agencies' efforts to protect investors from unnecessary risk while attempting to preserve current marketplace standards. In that regard, the Agencies have proposed that a special servicer could be removed based on an Operating Advisor recommendation by an "affirmative vote of a majority of the outstanding principal balance of all ABS interests voting on the matter, and require a quorum of 5-percent of the outstanding principal balance of all ABS interests."[51] In support of this requirement, the Agencies have simply said that the "removal of the special servicer should be independent of whether the third-party purchaser is the controlling class in the securitization transaction or similar considerations[,]" and that "[t]he proposed

[50] 78 Fed. Reg. at 57956; *see also* Proposed Rule §__.7(b)(6)(iv) (requiring same), 78 Fed. Reg. at 58032.

[51] 78 Fed. Reg. at 57956; *see also* Proposed Rule §__.7(b)(6)(vi)(B) (requiring same), 78 Fed. Reg. at 58032.

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affirmative majority vote and quorum requirements are designed to provide additional protections to investors in this regard."[52]

The CRE Finance Council Issuer, B-Piece Buyer and Servicer forums all unanimously favor increasing the quorum requirements to be more in line with current market practices. They would, therefore, recommend a tiered-system under which the requisite quorum for a replacement vote would be two-thirds of all of those eligible to vote before the B-Piece Investor had been appraised down below 25 percent and one-third after. Even this would be a significant downward departure from current market practices under which special servicer replacement while the B-Piece Buyer remains in control either is not subject to a bondholder vote or requires a very high percentage of all bondholders (60-75 percent) to affirmatively vote for replacement. After the B-Piece Buyer no longer is in control, generally replacement is required only if at least 50 percent of all bondholders affirmatively vote in favor. Part of the B-Piece Investor and Servicer rationale for the higher thresholds is that the B-Piece Investors have special servicing rights that would be threatened by low voting thresholds at a point in time when the primary beneficiary of effective special servicing is the B-Piece Investor itself because it remains in the first-loss position.

CREFC's IG Investors do not support quorum requirements at that high a level. There is, however, concern – even among the most conservative CMBS IG Investors – that the 5-percent quorum threshold is simply too low; would open the market to manipulation; could result in unnecessary replacement of a special servicer; and could lead to the highjacking of the process by a single well-placed, but disgruntled, investor. At the other end of the spectrum, many investors are concerned that a quorum threshold that is set too high will be unachievable because of the frequent difficulty in identifying and locating many bond investors. The CREFC consensus position reconciling these two concerns is that the quorum threshold should be raised to a minimum of 20 percent with at least three separate investors participating in the vote. In a survey of CREFC's IG Investors, over 92 percent of those responding believed that the quorum rule should include a requirement that at least three separate investors must participate in the vote; and 50 percent of the responding investors opined that the appropriate quorum threshold should be 20 percent. All CRE Finance Council member constituencies thus support raising the quorum requirements to at least 20 percent (with at least 3 independent investors participating in the vote).

CRE Finance Council Recommendation: The removal of the special servicer should be subject to a majority vote of the outstanding principal balance of all ABS interests voting on the matter, but the minimum quorum requirement should be raised to 20 percent with at least three independent investors participating in the vote.

[52] 78 Fed. Reg. at 57956-7.

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4. **The Prohibition on B-Piece Buyers being affiliated with originators that contribute more than 10 percent of the loans to a CMBS loan pool should be eliminated**

The Proposed Rule would bar a third-party purchaser of the EHRI retention position generally from being "affiliated with any party to the securitization transaction (including, but not limited to, the sponsor, depositor, or servicer) other than investors in the securitization transaction,"[53] but allows for an exception for "[o]ne or more originators of the securitized assets, as long as the assets originated by the affiliated originator or originator[s] collectively comprises less than 10 percent of the principal balance of the securitized assets included in the securitization transaction at closing of the securitization transaction."[54]

While the Proposed Rule is silent on the rationale for this restriction and associated exception, the Prior Proposed Rule makes the argument that it "intended to address the potential conflicts of interest that can arise when a third-party purchaser serves as the 'controlling class' of a CMBS transaction."[55] A B-Piece Buyer in a CMBS transaction typically does, however, serve as the "controlling class" as long as the principal balance of its investment in the deal is at least 25 percent of its initial principal balance. There is no compelling reason to preclude the affiliate of an originator from purchasing the EHRI position. Indeed, two prominent institutions that represent a material percentage of B-Piece capital have affiliates heavily engaged in originating CMBS loans, and the imposition of this affiliation prohibition may jeopardize a significant amount of potential third-party purchaser capital and forestall the development of underwriting that has more integrity because of the ultimate bearing of the first-loss position by a corporate affiliate.

CRE Finance Council Recommendation: The Agencies should eliminate any prohibition on the affiliation between a third-party purchaser bearing the EHRI retention obligation and an originator of loans for that transaction. This recommendation is unanimously supported across all CREFC constituencies.

5. **Additional Operating Advisor Related Disclosures**

The Proposed Rule requires various CMBS-specific transaction document required disclosures, including required disclosures of Operating Advisor related information.[56] The required Operating

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[53] Proposed Rule §__.7(b)(5)(i), 78 Fed. Reg. at 58031.

[54] Proposed Rule §__.7(b)(5)(ii)(B), 78 Fed. Reg. at 58031.

[55] 76 Fed. Reg. at 24110.

[56] *See* Proposed Rule § __.7(b)(7)(vii), 78 Fed. Reg. at 58031; *see also* discussion at 78 Fed. Reg. at 57957.

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Advisor disclosures currently include the name and form of organization of the Operating Advisor; a description of how the Operating Advisor meets the standards in the Proposed Rule (including the Operating Advisor's "experience, expertise and financial strength to fulfill its duties");[57] and the terms of the Operating Advisor's compensation.[58] Additionally, the Agencies discuss the need for the Operating Advisor to be independent to others as part of the securitization transaction, and state that "an independent Operating Advisor is a key factor in providing a check on third-party purchasers and special servicers, thereby protecting investors' interests."[59] The Proposed Rule then states that the securitization transaction documents shall provide for the fact that the Operating Advisor is not affiliated with other parties to the transaction, does not either directly or indirectly have any financial interest in the transaction (other than fees as part of its role as Operating Advisor), and will act in the best interest of investors.[60]

CREFC's IG Investors have suggested that two additional disclosures be required in order to fully ensure the independence of the Operating Advisor and there is strong support across all of the CRE Finance Council's members in support of the additional disclosure. First, any material conflict of interest or potential material conflict of interest that the Operating Advisor may have should be reported as an additional disclosure to the securitization transaction. This will allow the parties, including IG Investors, to closely scrutinize the Operating Advisor to ensure that it will truly act independently. Second, some IG Investors believe that just compensation will both attract high quality Operating Advisors and help guarantee a conflict of interest-free environment. Even though the terms of the Operating Advisor's compensation need to be disclosed,[61] additional information regarding the formula for calculating such compensation should be disclosed. By mandating disclosure of these additional points, all parties to the securitization transaction can make educated decisions. Further, it will allow the marketplace to help determine how best to make the Operating Advisor independent.

CRE Finance Council Recommendation: The Agencies should require additional disclosures related to (i) any material conflict of interests or potential conflict of interests that the Operating Advisor may have, and (ii) the formula behind the Operating Advisors compensation. Both of these disclosures will serve the goals of transaction transparency and independence of the Operating Advisor.

[57] Proposed Rule §__.7(b)(6)(ii), 78 Fed. Reg. at 58031.

[58] Proposed Rule §__.7(b)(7)(vii)(A) – (C), 78 Fed. Reg. at 58031.

[59] 78 Fed. Reg. at 57955.

[60] Proposed Rule §__.7(b)(6)(i)(A) – (C), 78 Fed. Reg. at 58031.

[61] *See* §__.7(b)(6)(iii), 78 Fed. Reg. at 58032.

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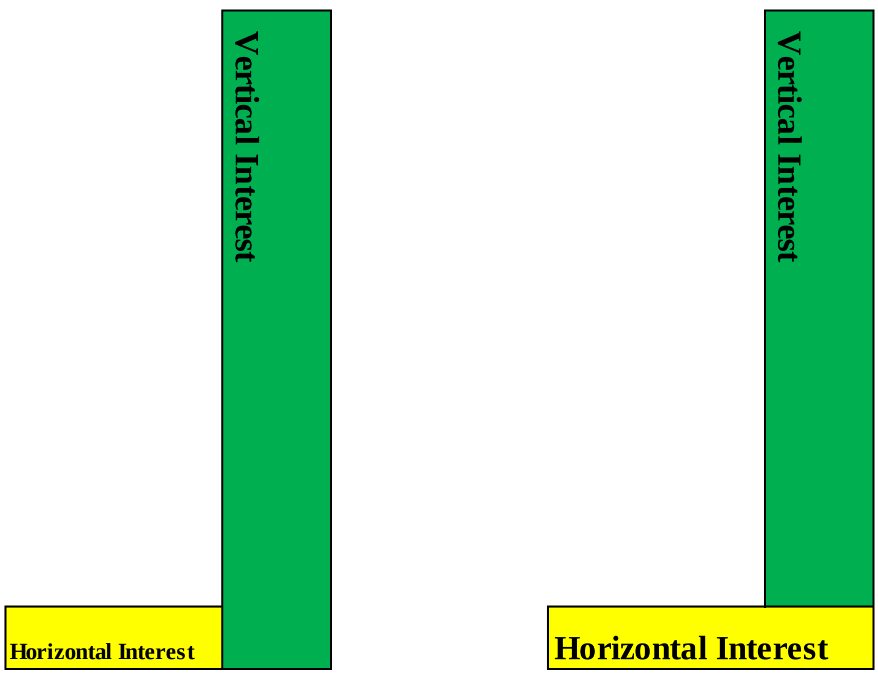
D. TECHNICAL RECOMMENDATIONS

The following technical recommendations have the unanimous support of each of CREFC's constituent forum leaders. We believe that incorporation of these suggestions will ensure that the details of the proposed retention regime will be clearer and more operable in the marketplace.

1. Basic CMBS Retention – L-Shaped CMBS Retention

The Proposed Rule allows CMBS securitization sponsors to share the 5-percent fair value retention obligation with a B-Piece Investor that purchases the EHRI and the Proposed Rule further allows the retention obligations to be allocated between the two in this structure in essentially any way to which the sponsor and the B-Piece Investor agree provided that the total retained amount satisfies the core 5-percent fair value retention obligation. The question has arisen whether the sponsor's vertical retention must include a portion of the EHRI in a structure in which a B-Piece Investor will be sharing the retention obligations through its retention of the EHRI. The two graphs below illustrate the two potential L-shaped retention structures:



Alternative #1 **Alternative #2**

CMBS Sponsors have a strong preference for not requiring that their vertical retention include a share of the EHRI in this scenario because it avoids numerous accounting and securitization control

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problems. Given that the Proposed Rule permits a B-Piece Buyer to retain the entire 5-percent fair value retention obligation, it seems consistent with the philosophy of the Proposed Rule not to require the Sponsor to retain a portion of the EHRI in connection with L-Shaped retention. We also note that in the Prior Proposed Rule, the L-shaped risk retention proposed rule provided that the vertical portion of the retained risk was not to be calculated with respect to the ABS interests that were part of the horizontal portion of the retained risk.[62] A similar clarification should be made to the Proposed Rule.

2. Basic CMBS Retention – REMIC Residual Interests Should Be Excluded From The Retention Regime

Almost all CMBS transactions are done through a tax vehicle called a Real Estate Mortgage Investment Conduit ("REMIC"). The interests in a REMIC include one or more classes of "regular interests," which are entitled to principal and/or interest payments, and a single class of "residual interests," which generally do not receive principal or interest payments. As explained below, the sole purpose of the "residual interest" is to require the holder of that interest to be responsible for any REMIC net income tax obligation. Because the holder of that interest does not share any of the credit risk in the underlying transaction, the REMIC "residual interest" should not be subject to any of the retention requirements.

The principal benefit of the REMIC structure is that it is not taxed at the entity level.[63] Congress, however, wanted to ensure that to the extent the REMIC itself generates net income, tax would be paid on that income. Congress therefore required that the tax on any net income earned by the REMIC be paid by the holders of the "residual interest."[64] There is no requirement that a residual interest be entitled to any principal or interest. In fact, in the overwhelming majority of securitizations in the market, the holder of the residual interest is not entitled to any principal or interest.[65] The residual interest does not represent an economic interest in the securitization but is nevertheless responsible to pay the REMIC's taxes.[66]

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[62] *See* Prior Proposed Rule, 76 Fed. Reg. at 24103 (discussing same).

[63] § 860A(a) of the Internal Revenue Code of 1986, as amended (the "IRC").

[64] IRC § 860C.

[65] Although it is structurally possible that a residual interest could receive proceeds from the sale of foreclosed property that exceed the amounts owed to regular interest holders, it would be rare that such amounts are in fact ever received. Such amounts received, if any, would also be substantially less than the total tax liability generated by the residual interest.

[66] Because the residual interest represents income without any corresponding cash, it is often referred to as being "non-economic." Buyers of residual interests are paid upfront to bear the future liability of the securitization.

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Because a non-economic residual interest represents a tax liability, Congress was concerned that it not be held by persons who were unlikely to pay tax, such as certain tax-exempt entities (including "disqualified organizations") or non-U.S. persons.[67] Special rules exist to ensure that the taxable income of a REMIC is collected and that transfers to disqualified organizations are disregarded.[68] All pooling and servicing agreements contain restrictions against the transfer of a residual interest to an even broader category of "non-permitted" persons. While many sponsors, such as U.S. banks, would not be subject to these restrictions, other sponsors, such as funds, may be. Even sponsors that would be permitted to hold residual interests often find it less expensive or less burdensome to pay someone else to hold the residual interest and bear the future taxes. Any rule subjecting the "residual interest" to the risk retention requirements would upset the normal course of securitization formation without generating any off-setting benefit for the retention regime.

3. Basic CMBS Retention – Treatment of *Pari Passu* and Subordinated Notes and Participation Interests as Retention

In many smaller loan pool deals – floater deals or "large loan" deals with ten or fewer loans for example[69] – each loan included in the deal often has a companion *pari passu* note or participation interest or a subordinated note or participation interest (collectively, "Retained Interests") that is not included in the CMBS loan pool. The Retained Interests are in all ways relevant to risk retention and alignment of interests identical to any other ABS interest issued by the securitization vehicle. Only the form differs (since the Retained Interests are not technically issued by the securitization vehicle). The loans subject to Retained Interests are serviced under the related CMBS transaction documents; cashflow and losses are allocated to Retained Interests similarly to comparable ABS interests; and the owners of Retained Interests are in every way exposed to the performance of the related commercial mortgage loans in the same ways as the holders of ABS interests.

The retention of Retained Interests by a sponsor, originator or B-piece Buyer, in compliance with all other requirements for risk retention applicable to retention of ABS interests, should be a permissible form of risk retention. So long as the Retained Interests related to a CMBS transaction have an aggregate fair value of at least 5-percent of the total fair value of all ABS interests and related Retained Interests, then retention of the Retained Interests will satisfy the purposes of the retention requirements because the Retained Interests constitute "skin in the game" equivalent to holding a

[67] A "disqualified organization" includes the United States, any state or any political subdivision thereof, an organization that is exempt from tax (except certain farmers' cooperatives and tax-exempt organizations subject to the tax on "unrelated business income") and rural telephone and electricity cooperatives. IRC § 860E(e)(5).

[68] IRC § 860E(e).

[69] This logic applies equally to SBSC transactions, although the CRE Finance Counsel believes strongly that such transactions should be exempt from risk retention for the reasons explained elsewhere in this comment letter.

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retention in ABS interests issued by the CMBS vehicle. The added structural flexibility permitted by Retained Interests would allow retention in a more efficient form for certain investors (e.g., investors that for various regulatory or other reasons prefer to own "whole loan" interests rather than interests in the form of securities issued by a securitization vehicle). At the same time, the retention of Retained Interests does not compromise in any way the purposes served by risk retention.

4. QCRE – Certain Provisions of Section __.17 Should be Modified to Limit the Scope of the Requisite "Security Interest" and More Generally To Take Into Account *Pari Passu* and Junior Liens Loans

Pari passu notes are a common feature of the CRE loan market. Large commercial mortgage loans originated by a syndicate of investment banks on a *pari passu* basis (and/or with associated junior lien loans), for example, are extremely common in the current market, given that sponsors are often desirous of maximizing their exposure to a diversity of banks, and multiple banks are often bidding for and awarded the origination on a joint and several basis. The *pari passu* loans tend to be of the highest underwriting quality because of the marquis properties to which they are often attached and because of the additional hurdles to which such loans are subject (issuer retention of one of the notes or multiple securitizations, for example). A *pari passu* note should not be ineligible for QCRE loan treatment if it otherwise satisfies the applicable requirements (including the CLTV limitations). Where several major banks are involved in the origination process in such a large pari passu origination, there is generally a higher level of underwriting, due diligence and credit review, as multiple banks are involved in the diligence.

To satisfy the QCRE loan requirements, certain provisions of Section __.17 would need to be modified to account for QCRE loans that have associated *pari passu* loans and/or junior lien loans (which are expressly mentioned but not correctly accounted for) that are held outside the subject securitization trust.

For example, the following clarifications would need to be made:

(i) Section __.17(a)(1)(ii) which deals with assignment of leases and other property interests – insert after (ii) but prior to (A): "requires (together with any *pari passu* lien loans and/or junior lien loans on the subject mortgaged property, as their interests may appear)."[70]

(ii) Section __.17(a)(1)(iii)(A) requires the originator to obtain a security interest in "all interests of the borrower and any applicable operating affiliate" in the collateral that secures the loan."[71] Imposition of this requirement is consistent with marketplace and other legal requirements but

[70] Proposed Rule § __.17(a)(1)(ii), 78 Fed. Reg. at 58040.

[71] Proposed Rule § __.17(a)(1)(iii), 78 Fed. Reg. at 58040.

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only to the extent necessary to perfect the lender's interest in the property. Generally, the security interest is limited to the outstanding balance on the loan and the borrower (or other lien holders) are entitled to any overage. Two provisions would need to be amended to address these concerns. First, to address the *pari passu*/junior lien holder issue, insert after "A security interest" at the beginning of (iii) the words "Together with any pari passu lien loans and/or junior lien loans on the subject mortgaged property as their interests may appear". Second, at the end of (A) and (B) to deal with ensuring that the protection is properly sized, insert the words "to the extent necessary to perfect the bondholders' interest in the property".

(iii) The definitions of "DSC" and "CLTV" would need to be revised to recognize the *pari passu* interests by inserting "(together with any *pari passu* line loans but without regard to any junior lien loans)" at the very end of the DSC definition as the last clause in (2)(ii)[72] and by inserting "(together with any *pari passu* first lien mortgage loans)" in the CLTV definition after the words "first lien mortgage loan".[73]

We believe that the foregoing clarifications are necessary to ensure that the QCRE loan provisions are viable and consistent with reasonable market practice and other legal requirements. Accommodating *pari passu* lien loans is crucial in order to afford borrowers the ability to obtain large loan financing, and to permit multiple banks to participate in the origination of large commercial loans. There is no additional risk as the income from the property is simply divided on a *pari passu* basis among the senior lenders. There is no supportable reason that *pari passu* notes should not be eligible for QCRE loan treatment if they otherwise satisfy the applicable requirements (including the DSC and CLTV limitations). In addition, the security interest requirements also need to be reformed to ensure that that interest is not required to be more than necessary to protect the lenders' interests.

5. QCRE – Appraisals

Section __.17(a)(2)(ii) requires the originator to obtain a written appraisal. Written appraisals are a standard requirement for CMBS loans. Two details in the Proposed Rule requirement, however, warrant modification.

First, subsection (A) requires that the appraisal be done "by an appropriately State-certified or State licensed appraiser."[74] The standard market requirement is that the appraisal must satisfy Uniform Standards of Professional Appraisal Practice ("USPAP") requirements as adopted by the Appraisal

[72] *See* Proposed Rule §_.14 ("DSC" Definition), 78 Fed. Reg. at 58037.

[73] *See* Proposed Rule §_.14 ("CLTV" Definition), 78 Fed. Reg. at 58037.

[74] Proposed Rule § __.17(a)(2)(ii)(A), 78 Fed. Reg. at 58040.

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Standards Board of the Appraisal foundation. Many commercial appraisers meet the USPAP requirements but are not state certified or licensed as the certifications and licensure generally have more resonance in the residential real estate space

Second, subsection (C) requires an "'as is' opinion of the market value of the real property, which includes an income valuation approach that uses a discounted cash flow analysis."[75] The requirement that the opinion be based on a DCF approach may not be appropriate for a stabilized property like a mature multifamily property. Therefore, we recommend that the valuation approach could use a DCF or a direct cap rate analysis.

6. QCRE – Insurance Requirements

Section __.17(a)(3)(iii) – require each borrower and each operating affiliate to "[m]aintain insurance that protects against loss on collateral for the CRE loan . . . at least up to the amount of the loan . . . "[76] Generally, the standard insurance requirement is based on the lower of the loan balance or the replacement cost. If the replacement cost is lower than the loan amount, the borrower should not be required to maintain a higher level of insurance than is necessary to rebuild.

7. QCRE – Prior "Borrower" Performance

The QCRE loan underwriting requirements require that "based on the previous two years' actual performance, the *borrower* had" satisfied certain minimum Debt-Service Coverage ("DSC") ratios.[77] Commercial mortgage loans originated for CMBS often require the related real estate owners to transfer subject properties into newly formed special purpose borrowing entities. As such, the "borrower" for most such loans will not have existed for two years (or for any substantial period) prior to the origination of the loan and therefore the "borrower" cannot have had any particular DSC ratio, because that "borrower" did not exist and the financing upon which the DSC calculation is based also did not exist.

We interpret this requirement to mean that, based upon the financial performance of the subject property in the last two fiscal years ending prior to loan origination, the new loan (and the new borrower/property owner) would have had a DSC ratio (based upon the principal balance and interest rate of the new loan) that meets the specified requirements. A clarification that this interpretation is correct would be helpful.

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[75] Proposed Rule § __.17(a)(2)(ii)(C), 78 Fed. Reg. at 58040.

[76] Proposed Rule § __.17(a)(3)(iii), 78 Fed. Reg. at 58041.

[77] Proposed Rule § __.17(a)(2)(vi) (*emphasis* added), 78 Fed. Reg. at 58040.

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8. Floating Rate Mortgage Loans & Interest Rate Cap Contracts

The Proposed Rule excludes variable rate mortgage loans from the definition of QCRE loan, unless the borrower "obtained a derivative that effectively results in a fixed interest rate."[78] While we understand the Agencies' concern that exposure to rising interest rates may not be consistent with QCRE status, it is common for floating rate commercial mortgage loans originated for securitization to require the borrower to acquire and pledge an interest rate cap contract (rather than a swap agreement) from a credit-worthy counterparty as additional collateral for the loan. The use of a cap contract rather than a swap has two significant benefits. First, cap contracts provide for "one-way" payments: the counterparty is required to pay the borrower in the event that interest rates rise, however, the borrower benefits in a low or declining interest rate environment, since it is not required to make payments to the cap counterparty. A borrower subject to an interest rate swap agreement derives no benefit from low interest rate environments, because the "two-way" nature of the payments under a swap contract requires the borrower to pay the swap counterparty to the extent that interest rates decline below the "strike rate" under the swap contract.

Second, because swap contracts require the borrower to make payments to the swap counterparty in declining interest rate environments, the swap counterparty becomes a creditor of the borrower. Because CMBS borrowers typically are "special purpose entities" having only one creditor (i.e., the lender under the mortgage loan), the imposition of a second creditor makes such loans less secure than typical CMBS loans. Interest rate cap providers are not, under any circumstances, entitled to receive payments from the borrower (other than an up-front payment made at loan origination) and, therefore, can never be creditors of the borrower.

The Agencies should therefore allow floating rate commercial mortgage loans to qualify as QCRE loans, provided that such loans satisfy all other QCRE criteria; and, provided further that the related borrower pledges an interest rate cap contract from a credit-worthy counterparty with a strike rate that effectively sets a maximum interest exposure for the borrower which, when employed in a DSCR calculation, results in a DSCR for such mortgage loan that is consistent with QCRE status.

9. Exemption Process

As the Agencies expressly have noted:

> [S]ection 15G(e)(1) permits the agencies jointly to adopt or issue additional exemptions, exceptions, or adjustments to the risk retention requirements of the rules, including exemptions, exceptions, or

[78] Proposed Rule § __.17(a)(7)(iii)(B), 78 Fed. Reg. at 58041.

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> adjustments for classes of institutions or assets, if the exemption, exception, or adjustment would: (A) Help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.[79]

To ensure that Section 15G(e)(1) is implemented in a way that provides a meaningful opportunity to request an exemption, exception, or adjustment to the risk retention requirements, it is imperative that the Agencies circumscribe a formal 15G(e)(1) process in the final rules. The Agencies previously have indicated that they intend to jointly issue all guidance related to the risk retention rules;[80] while that is a laudable objective, it does create logistical challenges for those endeavoring to abide by a complicated set of rules that will require additional interpretation (and correction) as we move forward. Promulgating a formal set of rules for those seeking such assistance and redress would be a welcome development for marketplace participants.

CONCLUSION

The CRE Finance Council again recognizes that an extraordinary amount of thought and work went into the development of the Proposed Rule and we appreciate the extent to which the Agencies responded to and incorporated the concerns and suggestions of the CMBS market in re-crafting the Proposed Rule. Our members continue to believe that the Agencies' efforts to craft provisions that seek to address the unique characteristics of the CMBS market represent a productive step toward developing a risk retention framework that will be practical from the industry's perspective and attain the goals of the Act. Given the important role that commercial real estate plays in the economy, and the critical function that securitization, in turn, serves in commercial real estate, the Agencies must

[79] 78 Fed. Reg. at 57969-70.

[80] 78 Fed. Reg. at 57933.

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take the necessary time to get this right, and the CRE Finance Council looks forward to working further with the Agencies on this endeavor.

Sincerely,

Stephen M. Renna
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CRE Finance Council

cc: The Honorable Shaun Donovan
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ATTACHMENTS

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APPENDIX 1: CREFC and Industry Background

Industry-led Reforms

Since the crisis, CMBS market participants have sought to address industry weaknesses. A broad variety of stakeholders have taken steps to promote greater levels of discipline in loan origination, structuring, monitoring, and disclosure.

As part of its core mission, CRE Finance Council works closely with its members, including the majority of CMBS issuers, B-piece buyers and servicers, as well as leading investors in the asset class, to establish best practices. In response to the crisis, CRE Finance Council members developed and enhanced several sets of documentation and practice standards, which materially add to market transparency, standardization and efficiency.

The below templates and standards were developed by working groups under the auspices of the CRE Finance Council and staffed by volunteers from the CRE lending, investing and servicing communities. These resources are reviewed and refreshed ongoing, so as to remain relevant and meaningful.

1. ***CREFC Investor Reporting Package (U.S. and EU Versions):*** Standardized and comprehensive package of bond, loan and property level information used extensively in the CMBS marketplace. This data is collected prior to issuance and throughout the life of the transaction.
   a. ***CREFC Special Servicing Disclosure Reports added to IRP™:*** New disclosure reports adopted December 2012 providing increased transparency surrounding special servicer activities, including information regarding affiliates, fees, loan modification decisions, and the final disposition of specially-serviced CMBS loans.
   b. ***Standardized Annex A:*** Provides a deep data dive on the largest loans within the transaction, including enhanced granularity regarding operating statements and additional data with respect to escrow accounts and reserves.

2. ***Pooling and Servicing Agreement (PSA):*** First offered to the public by CREFC's predecessor, Commercial Mortgage Securities Association. Since the crisis, numerous enhancements and modifications have been made, including more specific deal terms and conflict resolution standards for issues involving servicers.

3. ***Model Representations & Warranties:*** Standardized set of representations and warranties for inclusion in transaction documentation regarding the accuracy of loans in the pool, including more than 50 parameters. This is a critical feature of CMBS documentation as it enables investors to pursue loan repurchases in the event of material

breaches; representations and warranties essentially function as a loan-level form of "skin-in-the-game" for the originators, issuers and sponsors.

4. ***Principles-Based CRE Loan Underwriting Framework:*** Set of principles establishing industry best practices in underwriting processes and characteristics, encouraging standardization and lower risk-taking in lending.

APPENDIX 2: Closing Date Cash Flow v. Principal Repayment Test

Risk Retention - Alternative Test

Conclusion: It is imperative that par, not fair value, be used as the valuation treatment CMBS in order for the Alternative regulatory test to apply within in the context of current economics and market practices. If fair valuation is maintained as part of the requirement, most, if not all, CMBS deals will fail the test until maturity.

Note: For the purposes of simplicity, the below assumes no losses to the pool. Losses would further challenge the deal, making it increasingly difficult to pass the Alternative test, especially if treated under fair value. This bolsters the case that the Alternative test is viable only in a par valuation environment.

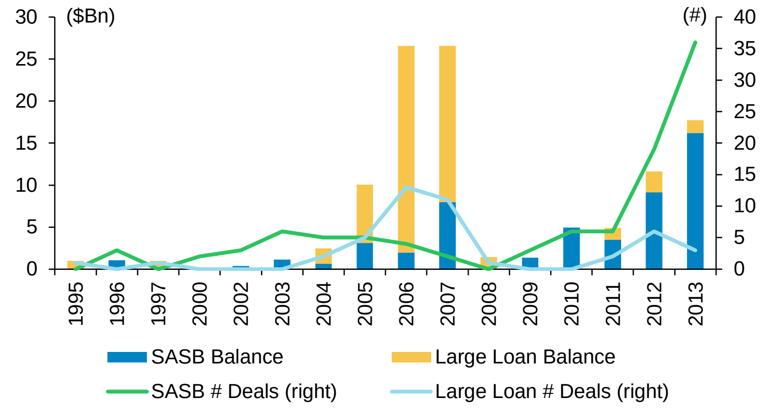
Pool Balance	$1,250,000,000
WAC	5.25%
WAM	10
WARA	30
Discount Rate on Pool	4.75%
Fair Value of Pool	$1,295,526,185
Fair Value % Principal	103.6%
Ex Post CDR Assumption	0.00%
Severity Assumption	45.0%
Note: Assumes no liquidation lag	
Total Losses	0.0%
FV of HRI	$64,776,309
Discount Rate on HRI	14.00%
Current Yield on HRI	6.40%
HRI WAL	10
HRI Implied Principal	$159,973,803
HRI Purchase Price	$0.405
HRI Implied Coupon Rate	**2.59%**
HRI Principal Percentage of Total Pool	**12.8%**
Loss-Adjusted IRR	14.0%

	Loss-Adjusted Pool Amounts								HRI Loss-Adjusted Cash Flows					CREFC Test		
Year	Defaults	Liquidations	Losses	PPMTs	IPMTs	EB	CF	TOT. PRIN PMTs	IPMTs	Losses	PPMTs	EB	CF	HRI: % of CF as % of UPB	Rest of Pool: % of CF as % of UPB	HRI % < Rest of Pool %?
0						$1,250,000,000						$159,973,803	($64,776,309)			
1	$0	$0	$0	$18,021,167	$65,625,000	$1,231,978,833	$83,646,167	$18,021,167	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	7.4%	**OK**
2	$0	$0	$0	$18,967,278	$64,678,889	$1,213,011,555	$83,646,167	$18,967,278	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	7.5%	**OK**
3	$0	$0	$0	$19,963,060	$63,683,107	$1,193,048,495	$83,646,167	$19,963,060	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	7.7%	**OK**
4	$0	$0	$0	$21,011,121	$62,635,046	$1,172,037,374	$83,646,167	$21,011,121	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	7.9%	**OK**
5	$0	$0	$0	$22,114,205	$61,531,962	$1,149,923,169	$83,646,167	$22,114,205	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	8.0%	**OK**
6	$0	$0	$0	$23,275,201	$60,370,966	$1,126,647,968	$83,646,167	$23,275,201	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	8.2%	**OK**
7	$0	$0	$0	$24,497,149	$59,149,018	$1,102,150,820	$83,646,167	$24,497,149	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	8.4%	**OK**
8	$0	$0	$0	$25,783,249	$57,862,918	$1,076,367,571	$83,646,167	$25,783,249	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	8.7%	**OK**
9	$0	$0	$0	$27,136,869	$56,509,297	$1,049,230,702	$83,646,167	$27,136,869	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	8.9%	**OK**
10	$0	$0	$0	$1,049,230,702	$55,084,612	$0	$1,104,315,313	$1,049,230,702	$4,145,684	$0	$159,973,803	$0	$164,119,487			
11	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
12	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
13	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
14	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
15	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
16	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
17	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
18	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
19	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
20	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
21	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
22	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
23	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
25	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
26	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
27	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
28	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
29	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
30	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			

APPENDIX 3: Loan Issuance and Maturation

Deal Balance By Issuance Year

	Balance ($)		Number of Deals	
Year	SASB	Large Loan	SASB	Large Loan
1995	0	967,185,797	0	1
1996	1,072,448,928	0	3	0
1997	0	977,099,000	0	1
2000	236,967,406	0	2	0
2002	361,964,000	0	3	0
2003	1,147,659,000	0	6	0
2004	644,200,000	1,834,015,102	5	2
2005	3,108,700,000	6,944,884,010	5	5
2006	1,981,273,330	24,573,697,961	4	13
2007	7,957,901,391	18,623,193,266	2	11
2008	0	1,438,411,000	0	1
2009	1,360,000,000	0	3	0
2010	4,947,990,100	0	6	0
2011	3,509,601,594	1,403,042,765	6	2
2012	9,128,506,326	2,478,912,811	19	6
2013	16,193,193,878	1,514,949,000	36	3



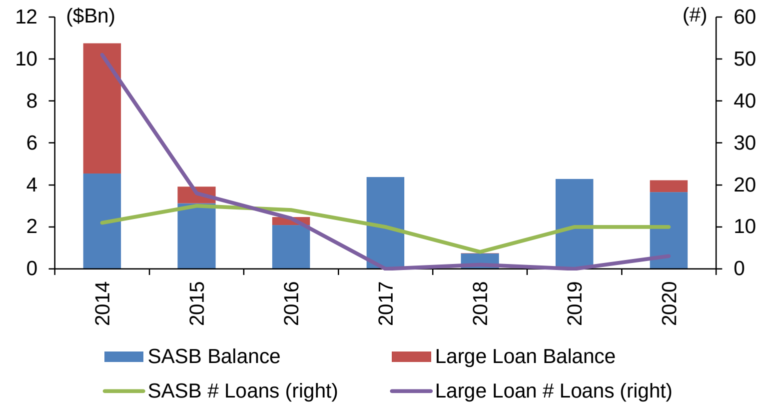
Source: Trepp, Morgan Stanley Research

APPENDIX 3: Loan Issuance and Maturation

Loan Balance By Maturity

	Balance ($)		Number of Loans	
Year	SASB	Large Loan	SASB	Large Loan
2014	4,540,654,166	6,210,789,865	11	51
2015	3,124,473,609	791,406,231	15	18
2016	2,091,398,327	380,400,000	14	12
2017	4,375,735,012		10	0
2018	732,530,275	11,355,284	4	1
2019	4,277,838,655		10	0
2020	3,664,851,429	552,912,000	10	3

Source: Bloomberg, Trepp, Morgan Stanley Research
Note: Includes loans that have optional extensions



APPENDIX 4: Cumulative Loss Rates and Loss Severities

Cumulative Loss Rate					
	All Time	2013 YTD (201309)	2012	2011	2010
SASB	0.25%	0.00%	0.00%	0.00%	0.53%
Conduit	2.79%	0.86%	1.18%	1.12%	0.73%

Source: Trepp and JPMorgan Chase & Co.

Average Corporate Debt Recovery Rates Measured by Post-Default Trading Prices						
	Issuer-weighted			Volume-weighted		
Lien Position	**2012**	**2011**	**1982-2012**	**2012**	**2011**	**1982-2012**
1st Lien Bank Loan	67.0%	70.9%	66.0%	66.8%	77.8%	59.9%
2nd Lien Bank Loan*	17.4%	68.3%	29.8%	15.3%	67.5%	28.2%
Sr. Unsecured Bank Loan*	n.a.	23.1%	47.1%	n.a.	43.0%	40.2%
Sr. Secured Bond	51.2%	63.4%	51.6%	28.4%	57.7%	49.8%
Sr. Unsecured Bond	43.4%	39.7%	37.0%	40.2%	55.2%	37.8%
Sr. Subordinated Bond	29.7%	36.7%	30.9%	35.5%	31.5%	25.7%
Subordinated Bond	35.4%	35.4%	31.5%	30.9%	35.2%	25.3%
Jr. Subordinated Bond	n.a.	n.a.	24.7%	n.a.	n.a.	17.1%

* The recovery rates for 2011's and 2012's second lien and unsecured bank loans were based on no more than three observations, respectively
Source: Moody's Investors Service

APPENDIX 4: Cumulative Loss Rates and Loss Severities

Single Asset/Borrower Deals			
Vintage	Total Sec. Bal.	Loss Amount	Cum. Loss %
1997	953,691,691	-	0.00%
1998	1,005,000,000	-	0.00%
1999	1,707,187,444	3,627	0.00%
2000	3,236,375,546	3,580,285	0.11%
2001	4,759,636,946	272,536	0.01%
2002	2,508,823,945	3,812	0.00%
2003	2,227,159,000	-	0.00%
2004	4,247,025,000	-	0.00%
2005	12,083,629,700	-	0.00%
2006	10,146,778,330	930,513	0.01%
2007	13,807,901,391	243,885,592	1.77%
2009	1,360,000,000	-	0.00%
2010	12,747,896,207	-	0.00%
2011	3,509,601,594	-	0.00%
2012	9,293,506,326	-	0.00%
2013	16,078,193,878	-	0.00%
Grand Total	**99,672,406,998**	**248,676,364**	**0.25%**

	Cumulative Loss Rate				
	All Time	2013 YTD (201309)	2012	2011	2010
SASB	0.25%	0.00%	0.00%	0.00%	0.53%
Conduit	2.79%	0.86%	1.18%	1.12%	0.73%

SASB Deals							
Deal	Property Name	Property Type	Closing Date	Vintage	Orig Bal	Total Loss	Loss %
stein971	Steiner Properties, LLC	Various	19970327	1997	60,416,691	-	0.00%
sctsdale	Scottsdale Fashion Squa	RT	19970812	1997	156,000,000	-	0.00%
uswfb1a	Kansas Gas & Electric #4	Various	19970930	1997	177,275,000	-	0.00%
13gengro	13 Affiliates of General (	RT	19971125	1997	560,000,000	-	0.00%
fairfax	Fair Oaks Mall	RT	19980303	1998	140,000,000	-	0.00%
ltt981	Library Tower	OF	19980311	1998	200,000,000	-	0.00%
aventura	Aventura Mall	RT	19980406	1998	200,000,000	-	0.00%
ge981	Various	Various	19980925	1998	465,000,000	-	0.00%
cr99zc1	Various	Various	19990225	1999	140,000,000	-	0.00%
star99c1	Starwood Portfolio	LO	19990316	1999	541,328,908	-	0.00%
1251xl	1211 Avenue of the Ame	OF	19990412	1999	450,000,000	-	0.00%
ms991nyp	One New York Plaza	OF	19990608	1999	245,858,536	-	0.00%
mcmt99c1	Sheraton Fisherman's W	LO	19990830	1999	330,000,000	3,627	0.00%
vfc00vno	Various	RT	20000301	2000	500,000,000	128	0.00%
smp001	SDG Macerich 13 Proper	RT	20000412	2000	138,500,000	-	0.00%
bc2000a	Various	Various	20000419	2000	109,690,006	542,299	0.49%
fts004ts	Various	Various	20000504	2000	430,000,000	2,893,450	0.67%
fb1211aa	1211 Avenue of the Ame	OF	20000512	2000	300,000,000	135,510	0.05%
1345aoa	1345 Avenue of the Ame	OF	20000928	2000	450,000,000	-	0.00%
gs00dw1	Various	IN	20001017	2000	264,555,825	1,072	0.00%
ppglp0c1	The Providence Place M	RT	20001102	2000	127,277,400	-	0.00%
hilton00	Hilton Hotels Portfolio	LO	20001109	2000	499,580,782	7,826	0.00%
pruhtgc1	Various	RT	20001130	2000	243,885,659	-	0.00%
cr00zc2	Various	Various	20001213	2000	172,885,874	-	0.00%

msxl280	280 Park Avenue	OF	20010207	2001	269,805,327	66,811	0.02%
bs01epr	Various	OT	20010214	2001	125,000,000	-	0.00%
gs01lib	One Liberty Plaza	OF	20010223	2001	432,000,000	-	0.00%
bacm01fm	The Florida Mall	RT	20010223	2001	269,715,565	-	0.00%
ml01hrpt	Office Portfolio Trust	OF	20010228	2001	259,828,148	-	0.00%
chase245	245 Park Avenue	OF	20010313	2001	500,000,000	194,956	0.04%
pgmt01xl	Potomac/Gurnee Mills	RT	20010501	2001	354,807,985	-	0.00%
ms01sgm	Sawgrass Mills	RT	20010731	2001	300,000,000	-	0.00%
lbubswm	Various	RT	20010809	2001	800,000,000	-	0.00%
gsms1285	1285 Avenue of the Ame	MU	20010816	2001	372,250,000	6,858	0.00%
ms01frm	Freehold Raceway Mall	RT	20010926	2001	177,776,741	3,911	0.00%
cr01zc1	Various	Various	20011127	2001	103,341,595	-	0.00%
jpm01kp	Kings Plaza	RT	20011130	2001	172,051,784	-	0.00%
lb01c7a	299 Park Avenue	OF	20011206	2001	44,000,000	-	0.00%
fb01lcca	Portfolio	HC	20011213	2001	449,059,801	-	0.00%
ball1wbm	Waikiki beach Marriott F	LO	20011227	2001	130,000,000	-	0.00%
gs02calw	Various	IN	20020226	2002	950,000,000	-	0.00%
ms02wm	Woodfield Shopping Cer	RT	20020326	2002	43,000,000	417	0.00%
fvmmt02c	Fashion Valley Mall	RT	20020327	2002	29,123,704	-	0.00%
gmacn2fl	Fort Lewis Army Base	MF	20020401	2002	150,000,000	-	0.00%
gmac02md	Fort Meade Military Hou	MF	20020523	2002	325,000,000	-	0.00%
gmacn02a	Various	Various	20020816	2002	64,600,000	-	0.00%
vfmmt2c4	Westfield Shoppingtown	RT	20020906	2002	49,736,241	3,395	0.01%
1166aoa	1166 Avenue of the Ame	OF	20021008	2002	147,364,000	-	0.00%
calst2c6	Various	MU	20021205	2002	750,000,000	-	0.00%
ept03epr	Various	Various	20030227	2003	155,500,000	-	0.00%
basn03rt	Renaissance Tower	OF	20030415	2003	20,000,000	-	0.00%
gmac03ea	Laurelwood	OT	20030501	2003	21,959,000	-	0.00%
gmac03kl	Kirtland Housing	MF	20030508	2003	74,000,000	-	0.00%
calw031	Various	IN	20030625	2003	460,000,000	-	0.00%
gmac03fd	Ford Island Housing	MF	20030715	2003	114,000,000	-	0.00%
gmac03fb	Fort Bragg Housing	MF	20030801	2003	296,000,000	-	0.00%
ms03kids	Various	Various	20030811	2003	300,000,000	-	0.00%
ms03bnb	Various	Various	20030930	2003	30,000,000	-	0.00%
gmac03pr	Presidio of Monterey/Na	MF	20031015	2003	355,200,000	-	0.00%
gmac03st	Stewart/Hunter Army Ai	MF	20031112	2003	246,500,000	-	0.00%
gmac03ca	Various	Various	20031201	2003	154,000,000	-	0.00%
cdc04cm	California Market Center	RT	20040116	2004	16,000,000	-	0.00%
ms04gst1	Various	Various	20040205	2004	418,000,000	-	0.00%
olcm04c3	One Lincoln Street	OF	20040527	2004	311,000,000	-	0.00%
gmac04fl	Fort Lewis Project	MF	20040610	2004	75,000,000	-	0.00%
bs04esa	Various	LO	20040629	2004	2,050,000,000	-	0.00%
gmac04de	Fort Detrick and WRAM(	MF	20040809	2004	83,200,000	-	0.00%
gmac04fp	Fort Polk Project	MF	20040910	2004	165,000,000	-	0.00%
fb04cbn1	Various	Various	20041022	2004	5,000,000	-	0.00%
tower042	Various	Various	20041207	2004	293,825,000	-	0.00%

APPENDIX 4: Cumulative Loss Rates and Loss Severities

fb04hc1	Various	HC	20041215	2004	820,000,000	-	0.00%
gmacn4pn	Camp Pendleton Project	MF	20041230	2004	10,000,000	-	0.00%
gmacn5hc	Hickam Air Force Base P	MF	20050301	2005	212,000,000	-	0.00%
nlf051	Various	Various	20050304	2005	275,000,000	-	0.00%
bal5boca	Boca Portfolio	MU	20050317	2005	700,000,000	-	0.00%
ml05ggp1	GGP 13 Affiliates	RT	20050321	2005	417,400,000	-	0.00%
gs05rock	Rockefeller Center	OF	20050526	2005	1,685,000,000	-	0.00%
ml05gn1	Battery Park - Gateway I	MF	20050531	2005	94,229,700	-	0.00%
cci051	Tower Sites	Various	20050608	2005	1,900,000,000	-	0.00%
bs05afr1	Various	MU	20050615	2005	304,000,000	-	0.00%
fb20051	1345 Avenue of the Ame	OF	20050825	2005	981,000,000	-	0.00%
ball5esh	Various	Various	20051005	2005	2,520,000,000	-	0.00%
balleshd	Various	Various	20051005	2005	2,520,000,000	-	0.00%
116605c6	1166 Avenue of the Ame	OF	20051102	2005	475,000,000	-	0.00%
twhotel	Various	LO	20060104	2006	425,000,000	930,513	0.22%
cs06oma	mezzanine loan	OF	20060210	2006	415,150,330	-	0.00%
ball6277	Mezzanine loan	OF	20060215	2006	200,000,000	-	0.00%
bal06esh	#N/A	#N/A	20060224	2006	180,500,000	-	0.00%
com6cnl2	CNL Hotel & Resorts, Inc	LO	20060227	2006	1,000,000,000	-	0.00%
tower061	Various	Various	20060228	2006	1,550,000,000	-	0.00%
ball6laq	La Quinta	Various	20060420	2006	2,260,000,000	-	0.00%
cs06hc1	Various	HC	20060427	2006	1,200,000,000	-	0.00%
tstar061	The Timberlands	OT	20061030	2006	800,000,000	-	0.00%
cci061	Tower Sites	Various	20061129	2006	1,550,005,000	-	0.00%
ftst64ts	Four Times Square (The	Various	20061219	2006	566,123,000	-	0.00%
amt071	Tower Sites	Various	20070504	2007	1,750,000,000	-	0.00%
gtp071	Tower Sites	Various	20070525	2007	550,250,000	-	0.00%
gs07eop	EOP Portfolio	MU	20070619	2007	7,407,651,391	-	0.00%
wb07esh	Extended StayAmerica	LO	20070828	2007	4,100,000,000	243,885,592	5.95%
ddr09dd1	Note A Component	RT	20091125	2009	400,000,000	-	0.00%
ball9fdg	FLAGLER DEVELOPMENT	MU	20091215	2009	460,000,000	-	0.00%
jpm09iw	IWEST Portfolio	RT	20091223	2009	500,000,000	-	0.00%
obp10obp	Bank of America Tower a	OF	20100708	2010	650,000,000	-	0.00%
vornado1	VNO Portfolio-A2FX	RT	20100818	2010	660,000,000	-	0.00%
jp10cntr	Centro Portfolio	RT	20100913	2010	484,625,882	-	0.00%
jp10cntm	Centro Portfolio Mezz	RT	20100913	2010	89,000,000	-	0.00%
ballhltn	Hilton Loan	LO	20101105	2010	8,264,270,325	-	0.00%
esa10esh	ESH Portfolio	LO	20101123	2010	2,000,000,000	-	0.00%
acr10art	ART Portfolio-A1	WH	20101215	2010	600,000,000	-	0.00%
gs11alf	Sunrise Assisted Living P	HC	20110317	2011	325,000,000	-	0.00%
ballfshn	Fashion Centre at Penta	RT	20110714	2011	410,000,000	-	0.00%
com11thl	Various	LO	20110728	2011	975,000,000	-	0.00%
jpm11cch	City Center Hotel Portfol	LO	20110808	2011	425,000,000	-	0.00%
wf11bxr	Mortgage Loan	RT	20110818	2011	1,000,000,000	-	0.00%
jpm11pls	Palisades Center	RT	20111221	2011	374,601,594	-	0.00%
com12w57	9 West 57th Street	OF	20120301	2012	625,000,000	-	0.00%

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bal12osi	Various	Various	20120327	2012	324,800,000	-	0.00%
jp127wtc	7 World Trade Center	OF	20120405	2012	125,000,000	-	0.00%
fmbt12fb	Fontainebleau Miami Be	LO	20120416	2012	412,000,000	-	0.00%
gs12aloh	Ala Moana	RT	20120514	2012	1,400,000,000	-	0.00%
jp12wldn	Walden Galleria	RT	20120530	2012	270,000,000	-	0.00%
jp12hsbc	HSBC Tower - 452 Fifth /	OF	20120725	2012	300,000,000	-	0.00%
gs12shop	The Grand Canal Shoppe	RT	20120806	2012	625,000,000	-	0.00%
ms12star	North Star Mall	RT	20120816	2012	340,000,000	-	0.00%
bal12cmz	Clarion Portfolio	LO	20120912	2012	165,000,000	-	0.00%
bal12clr	Clarion Portfolio	LO	20120925	2012	335,000,000	-	0.00%
comm12lt	Westroads Mall	RT	20121004	2012	259,000,000	-	0.00%
motel6	MOTEL 6	LO	20121113	2012	1,050,000,000	-	0.00%
bb12show	Fashion Show Mall	RT	20121114	2012	835,000,000	-	0.00%
vn126ave	1290 Avenue of the Ame	OF	20121129	2012	950,000,000	-	0.00%
jpm12phh	Palmer House Hilton	LO	20121211	2012	175,000,000	-	0.00%
bamlpark	101 Park Avenue	OF	20121213	2012	300,000,000	-	0.00%
gs12tmsq	One Time Square	RT	20121219	2012	208,000,000	-	0.00%
com12mvp	MVP Portfolio	LO	20121220	2012	294,706,326	-	0.00%
gs12bwtr	Bridgewater Commons	RT	20121221	2012	300,000,000	-	0.00%
qc13qc	Queens Center	RT	20130129	2013	600,000,000	-	0.00%
esa13efl	ESH 2013-ESA - Series FL	LO	20130212	2013	350,000,000	-	0.00%
esa13es5	ESH 5Yr Fixed	LO	20130212	2013	350,000,000	-	0.00%
esa13es7	ESH 7Yr Fixed	LO	20130212	2013	1,820,000,000	-	0.00%
esa13esm	ESH Mezz A Non-Free Pr	LO	20130212	2013	500,000,000	-	0.00%
gs13kyo	Non-PK A	LO	20130215	2013	1,100,000,000	-	0.00%
rbs13smv	The Shops at Mission Vie	RT	20130221	2013	295,000,000	-	0.00%
gs13king	Kings Plaza	RT	20130225	2013	498,503,359	-	0.00%
ms13wlsr	Wilshire Courtyard	OF	20130227	2013	193,000,000	-	0.00%
slg13bwa	1515 Broadway	MU	20130306	2013	900,000,000	-	0.00%
ms13altm	Altamonte Mall	RT	20130314	2013	160,000,000	-	0.00%
cgc13smp	Santa Monica Place	RT	20130320	2013	239,147,293	-	0.00%
lcc13gcp	Grand Central Plaza	OF	20130321	2013	275,000,000	-	0.00%
com13gam	Green Acres Mall	RT	20130321	2013	324,420,483	-	0.00%
wf13120b	120 Broadway	OF	20130328	2013	310,000,000	-	0.00%
cg13vno	666 Fifth Avenue	RT	20130328	2013	390,000,000	-	0.00%
gs13nyc5	Manhattan Collection	LO	20130328	2013	410,000,000	-	0.00%
com13wwp	Worldwide Plaza	OF	20130328	2013	710,000,000	-	0.00%
del13hdc	Hotel del Coronado	LO	20130411	2013	285,000,000	-	0.00%
del13hdm	Hotel del Coronado Mez	LO	20130411	2013	115,000,000	-	0.00%
com13sfs	Scottsdale Fashion Squa	RT	20130411	2013	525,000,000	-	0.00%
ballwbrk	Willowbrook Mall	RT	20130418	2013	360,000,000	-	0.00%
gs13pemb	Pembroke Lakes Mall	RT	20130423	2013	260,000,000	-	0.00%
wf13btc	Bergen Town Center	RT	20130425	2013	300,000,000	-	0.00%
cgc13375	375 Park Avenue	OF	20130529	2013	782,750,000	-	0.00%
jp13jwrz	Grande Lakes Desert Rid	LO	20130529	2013	510,000,000	-	0.00%
jp13jwmz	Grande Lakes Desert Rid	LO	20130529	2013	294,497,467	-	0.00%

com13thl	Tharaldson Portfolio A2	LO	20130627	2013	775,000,000	-	0.00%
jp13acmz	Americold Cold Storage	IN	20130725	2013	70,000,000	-	0.00%
cg13breh	BRE Select Hotels Corp F	LO	20130725	2013	600,000,000	-	0.00%
stw13fv1	Red Roof Inn Hotel Portf	LO	20130808	2013	199,040,632	-	0.00%
jpm13wt	Willis Tower (A-3-A-2-B)	OF	20130808	2013	91,834,644	-	0.00%
jpm13alc	ALC Portfolio	HC	20130821	2013	250,000,000	-	0.00%
com13300	300 Park Avenue	OF	20130827	2013	485,000,000	-	0.00%
bb13tysn	Tysons Galleria Mall	RT	20130829	2013	325,000,000	-	0.00%
bhp13bo	Boca Hotel Portfolio	LO	20130926	2013	425,000,000	-	0.00%

Source: Trepp

APPENDIX 5: SBSC and Corporate Debt Rating Transition Comparison

CMBS Single Asset/Single Borrower Lifetime Transition Matrices										
	Current Rating									
Orig Rating	Aaa (sf)	Aa (sf)	A (sf)	Baa (sf)	Ba (sf)	B (sf)	Caa (sf) / below	Total	Count	Wtd Avg Duration (Yrs)
Aaa (sf)	95%	3%	1%	0%	1%	0%	0%	100%	271	4.7
Aa (sf)	36%	53%	4%	3%	1%	2%	1%	100%	174	4.9
A (sf)	24%	14%	53%	2%	4%	1%	2%	100%	169	5.0
Baa (sf)	18%	5%	13%	56%	5%	2%	2%	100%	189	4.3

Source: Moody's Investors Service. Data as of February 2013

Total Global Corporate Debt Ratings Transitions -- Average Five-Year Letter Rating Migration Rates, 1970-2012*

From/To	Aaa	Aa	A	Baa	Ba	B	Caa	Ca-C	WR	Default
Aaa	52.027%	23.121%	5.208%	0.353%	0.307%	0.037%	0.037%	0.000%	18.817%	0.093%
Aa	2.881%	46.071%	20.953%	3.663%	0.681%	0.209%	0.057%	0.016%	25.172%	0.296%
A	0.195%	7.685%	50.245%	14.327%	2.618%	0.825%	0.171%	0.006%	23.250%	0.678%
Baa	0.180%	1.061%	12.145%	46.836%	8.641%	2.752%	0.534%	0.073%	26.159%	1.620%
Ba	0.041%	0.165%	2.040%	11.680%	26.464%	10.896%	1.395%	0.110%	39.219%	7.991%
B	0.032%	0.046%	0.265%	1.665%	6.531%	21.995%	5.079%	0.635%	44.552%	19.199%
Caa	0.000%	0.000%	0.022%	0.579%	1.685%	7.411%	9.226%	1.049%	43.724%	36.305%
Ca-C	0.000%	0.000%	0.000%	0.000%	0.000%	2.156%	1.848%	2.640%	41.663%	51.694%

*Last Cohort formed on 1/1/2008
Source: Moody's Investors Service

APPENDIX 6: QCRE Loan Analysis - Proposed Rule vs. CREFC Proposal

Trepp Public Conduit Universe

Reproposal Parameters: MF amort. 30y All other amort. 25y. 65 LTV. 1.5 DSCR (1.25 MF, 1.7 hospitality), 10+ yr Loan Term, No IO

							All				Qualified			
Vintage	**Total Count**	**Total Sec. Bal.**	**Qualified Count**	**% By Count**	**Qualified Sec. Bal.**	**% By Balance**	**Ever 90+**	**Ever 90+ %**	**Loss Amount**	**Cum. Loss %**	**Ever 90+**	**Ever 90+ %**	**Cum. Loss**	**Cum. Loss %**
1997	2,996	17,109,211,368	293	9.78%	1,109,357,933	6.48%	2,522,504,977	14.74%	565,545,998	3.31%	147,318,677	13.28%	21,928,085	1.98%
1998	8,435	46,206,359,955	880	10.43%	3,961,926,191	8.57%	4,896,008,145	10.60%	1,235,322,981	2.67%	152,952,107	3.86%	37,008,821	0.93%
1999	6,898	35,253,064,849	678	9.83%	2,609,046,966	7.40%	4,933,655,004	13.99%	1,114,021,272	3.16%	106,135,350	4.07%	17,015,561	0.65%
2000	3,865	22,241,634,274	401	10.38%	1,608,700,981	7.23%	4,160,180,740	18.70%	1,021,550,677	4.59%	107,085,633	6.66%	15,402,380	0.96%
2001	4,326	30,478,177,066	435	10.06%	2,037,174,211	6.68%	5,705,600,954	18.72%	1,352,776,368	4.44%	116,187,944	5.70%	25,702,275	1.26%
2002	4,100	33,091,693,298	443	10.80%	2,347,035,811	7.09%	4,581,375,638	13.84%	1,003,954,484	3.03%	114,795,023	4.89%	6,567,663	0.28%
2003	5,885	55,843,173,315	751	12.76%	3,703,460,954	6.63%	6,335,107,926	11.34%	939,448,184	1.68%	165,224,202	4.46%	27,665,123	0.75%
2004	6,694	79,389,101,101	564	8.43%	2,938,183,491	3.70%	9,483,808,177	11.95%	1,508,610,940	1.90%	82,167,203	2.80%	18,005,523	0.61%
2005	10,695	143,562,326,568	796	7.44%	4,321,088,482	3.01%	23,820,749,182	16.59%	4,019,031,941	2.80%	174,390,700	4.04%	57,288,855	1.33%
2006	11,921	162,824,533,258	525	4.40%	2,838,353,605	1.74%	33,475,622,956	20.56%	6,259,882,627	3.84%	78,216,664	2.76%	14,757,286	0.52%
2007	11,876	191,791,869,757	267	2.25%	1,449,046,164	0.76%	50,974,521,156	26.58%	6,269,466,456	3.27%	66,573,184	4.59%	6,959,651	0.48%
2008	819	10,707,465,072	13	1.59%	45,033,361	0.42%	2,313,358,236	21.61%	572,372,282	5.35%	5,356,623	11.89%	-	0.00%
2010	219	5,384,767,165	14	6.39%	567,113,511	10.53%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
2011	980	24,747,173,352	40	4.08%	302,502,681	1.22%	28,707,602	0.12%	-	0.00%	-	0.00%	-	0.00%
2012	1,735	32,164,603,817	153	8.82%	1,682,818,203	5.23%	2,435,549	0.01%	-	0.00%	-	0.00%	-	0.00%
2013	2,041	37,633,927,633	187	9.16%	2,044,021,128	5.43%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
Grand Total	**83,485**	**928,429,081,848**	**6,440**	**7.71%**	**33,564,863,674**	**3.62%**	**153,233,636,243**	**16.50%**	**25,861,984,209**	**2.79%**	**1,316,403,310**	**3.92%**	**248,301,223**	**0.74%**

Trepp Public Conduit Universe

CRE Finance Council Proposal : 30 yr AM; no maturity term; 1.5 DSCR (1.25 for multifamily; 1.7 for hospitality); 65 LTV (IO Loans LTV <=50)

							All				Qualified			
Vintage	**Total Count**	**Total Sec. Bal.**	**Qualified Count**	**% By Count**	**Qualified Sec. Bal.**	**% By Balance**	**Ever 90+**	**Ever 90+ %**	**Loss Amount**	**Cum. Loss %**	**Ever 90+**	**Ever 90+ %**	**Loss Amount**	**Cum. Loss %**
1997	2,996	17,109,211,368	365	12.18%	1,728,875,121	10.10%	2,522,504,977	14.74%	565,545,998	3.31%	169,207,804	9.79%	23,752,913	1.37%
1998	8,435	46,206,359,955	1,141	13.53%	7,320,245,854	15.84%	4,896,008,145	10.60%	1,235,322,981	2.67%	247,654,618	3.38%	53,005,898	0.72%
1999	6,898	35,253,064,849	970	14.06%	4,746,470,321	13.46%	4,933,655,004	13.99%	1,114,021,272	3.16%	225,528,160	4.75%	31,462,425	0.66%
2000	3,865	22,241,634,274	623	16.12%	3,594,660,183	16.16%	4,160,180,740	18.70%	1,021,550,677	4.59%	208,876,525	5.81%	39,326,987	1.09%
2001	4,326	30,478,177,066	712	16.46%	6,075,803,458	19.93%	5,705,600,954	18.72%	1,352,776,368	4.44%	398,431,455	6.56%	45,860,010	0.75%
2002	4,100	33,091,693,298	773	18.85%	7,085,994,969	21.41%	4,581,375,638	13.84%	1,003,954,484	3.03%	630,894,684	8.90%	186,357,139	2.63%
2003	5,885	55,843,173,315	1,356	23.04%	15,674,888,916	28.07%	6,335,107,926	11.34%	939,448,184	1.68%	847,871,956	5.41%	91,447,599	0.58%
2004	6,694	79,389,101,101	1,244	18.58%	17,927,783,610	22.58%	9,483,808,177	11.95%	1,508,610,940	1.90%	1,336,861,882	7.46%	88,227,083	0.49%
2005	10,695	143,562,326,568	1,694	15.84%	22,000,462,723	15.32%	23,820,749,182	16.59%	4,019,031,941	2.80%	1,249,188,794	5.68%	96,681,192	0.44%
2006	11,921	162,824,533,258	1,384	11.61%	18,317,383,907	11.25%	33,475,622,956	20.56%	6,259,882,627	3.84%	1,038,413,275	5.67%	83,173,445	0.45%
2007	11,876	191,791,869,757	1,040	8.76%	13,412,659,019	6.99%	50,974,521,156	26.58%	6,269,466,456	3.27%	806,297,590	6.01%	50,324,606	0.38%
2008	819	10,707,465,072	57	6.96%	413,581,522	3.86%	2,313,358,236	21.61%	572,372,282	5.35%	156,041,190	37.73%	29,807,123	7.21%
2010	219	5,384,767,165	94	42.92%	2,901,375,590	53.88%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
2011	980	24,747,173,352	254	25.92%	6,710,276,224	27.12%	28,707,602	0.12%	-	0.00%	-	0.00%	-	0.00%
2012	1,735	32,164,603,817	456	26.28%	6,760,476,941	21.02%	2,435,549	0.01%	-	0.00%	-	0.00%	-	0.00%
2013	2,041	37,633,927,633	586	28.71%	9,934,609,113	26.40%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
Grand Total	**83,485**	**928,429,081,848**	**12,749**	**15.27%**	**144,605,547,471**	**15.58%**	**153,233,636,243**	**16.50%**	**25,861,984,209**	**2.79%**	**7,315,267,934**	**5.06%**	**819,426,419**	**0.57%**

APPENDIX 7: Loan Performance by Term

Trepp Public Conduit Universe: All Loan Performance by Loan Term			
Vintage	5 - yr. Cum. Loss %	7 - yr. Cum. Loss %	10+ - yr. Cum. Loss %
1997	0.66%	1.72%	3.52%
1998	4.80%	1.59%	2.70%
1999	2.51%	1.92%	3.23%
2000	1.96%	1.93%	4.75%
2001	0.32%	0.94%	4.80%
2002	0.77%	1.19%	3.32%
2003	1.24%	1.12%	1.83%
2004	1.32%	2.04%	1.99%
2005	2.65%	2.60%	2.86%
2006	4.52%	3.06%	3.79%
2007	3.95%	2.16%	3.22%
2008	1.20%	6.09%	5.78%
2010	0.00%	0.00%	0.00%
2011	0.00%	0.00%	0.00%
2012	0.00%	0.00%	0.00%
2013	0.00%	0.00%	0.00%
Grand Total	**2.61%**	**2.07%**	**2.87%**

APPENDIX 8: Interest-Only Loan Performance

Trepp Public Conduit Universe: All IO Loans			
Vintage	**Total Count**	**Total Sec. Bal.**	**Cum. Loss %**
1997	46	534,329,092	0.74%
1998	112	2,884,794,990	0.83%
1999	122	2,553,497,312	1.97%
2000	133	1,761,049,270	1.14%
2001	216	3,164,922,998	2.32%
2002	220	3,278,040,729	1.18%
2003	615	14,386,572,012	1.03%
2004	1,468	37,022,087,464	0.94%
2005	4,481	94,986,573,794	2.45%
2006	6,389	122,776,731,711	3.47%
2007	7,858	166,019,657,689	3.04%
2008	518	8,640,371,879	5.28%
2010	32	713,433,633	0.00%
2011	163	6,085,919,572	0.00%
2012	320	10,988,969,236	0.00%
2013	494	17,985,875,618	0.00%
Grand Total	**23,187**	**493,782,827,000**	**2.59%**

APPENDIX 9:
Performance of Major vs. All Markets

Index	Peak to Trough	Peak to Current	Percentage Peak-to-Trough Loss Recovered	Peak Month	Trough Month
Apartment - Major	-23.6%	11.8%	150.2%	Dec-07	Dec-09
Apartment	-38.9%	-0.5%	98.8%	Dec-07	Dec-09
Office CBD - Major	-46.9%	-4.9%	89.5%	Dec-07	Sep-09
Office CBD	-49.6%	-6.6%	86.8%	Dec-07	Sep-09
Major Markets (All-Property)	-38.1%	-5.7%	85.1%	Dec-07	Nov-09
Apartment - Non-Major	-47.3%	-8.8%	81.5%	Sep-07	Dec-09
National All-Property	-40.2%	-14.9%	62.8%	Dec-07	Dec-09
Office	-46.0%	-18.1%	60.7%	Dec-07	Nov-09
Retail - Major	-38.3%	-15.7%	59.1%	Sep-07	Jun-10
Core Commercial	-40.6%	-19.9%	51.0%	Nov-07	Dec-09
Office CBD - Non-Major	-50.4%	-25.9%	48.6%	Dec-07	Sep-09
Non-Major Markets (All-Property)	-42.1%	-22.5%	46.6%	Oct-07	Dec-09
Office Suburban - Major	-46.4%	-25.7%	44.6%	Dec-07	Jun-10
Retail	-42.4%	-23.5%	44.6%	Aug-07	Sep-10
Industrial - Major	-34.1%	-20.3%	40.4%	Dec-07	Mar-10
Retail - Non-Major	-43.9%	-29.5%	32.9%	Sep-07	Sep-10
Office Suburban	-44.7%	-30.4%	32.1%	Oct-07	Jul-10
Industrial	-33.1%	-25.9%	21.6%	Jan-08	Jan-10
Office Suburban - Non-Major	-43.5%	-36.0%	17.2%	Dec-07	Dec-09
Industrial - Non-Major	-33.8%	-32.1%	5.0%	Mar-08	Dec-10

APPENDIX 10: Senior-Subordinate Structure Analysis

Risk Retention - Senior-Subordinate Structure Analysis

Conclusion: The challenge posed by the new Proposed Rule is one of capacity in the marketplace. Today, the B-Piece investor community typically purchases 6 or 7-percent of the par value of a deal at a discount that translates into a typical investment of 2.5 to 3-percent of the fair value of the deal proceeds. Under the proposal, B-Piece Investors will need to raise the capital to consume the expanded 5-percent fair value retention requirement. That level of retention will mean that bonds higher in the waterfall – bonds historically rated BBB-, BBB, and potentially even A- – will be swept into the EHRI retention position.

Description	**Scenario 1** Approximate levels based on recently executed transactions	**Scenario 2** Credit bonds subject to RR price at B-Piece Yield	**Scenario 3** Credit bonds subject to RR price at 50% B-Piece Spread
Par	$100.0	$100.0	$100.0
Gross Profit	3.00%	3.00%	3.00%
Market Value	$103.0	$103.0	$103.0
Req. Risk Retention	$5.2	$5.2	$5.2
B-Piece Size	$6.656	$6.656	$6.656
BBB- Size	$5.188	$5.188	$5.188
A Size	$3.687	$3.687	$3.687
AA Size	$6.438	$6.438	$6.438
10-year Swap	2.75	2.75	2.75
B-Piece (bond equivalent yield)	18.000%	18.000%	18.000%
BBB- Spread	425	1,525	650
A Spread	275	475	275
AA Spread	185	185	185
B-Piece Coupon (%)	4.360	4.360	4.360
BBB- Coupon (%)	4.811	4.811	4.811
A Coupon (%)	4.811	4.811	4.811
AA Coupon (%)	4.811	4.811	4.811
B-Piece Px	$0.385	$0.385	$0.385
BBB- Px	$0.849	$0.406	$0.720
A Px	$0.952	$0.819	$0.952
AA Px	$1.020	$1.020	$1.020
B-Piece Fair Value	$2.6	$2.6	$2.6
BBB- Fair Value	$4.4	$2.1	$3.7
A Fair Value	$3.5	$3.0	$3.5
AA Fair Value	$6.6	$6.6	$6.6
Total Fair Value	$17.0	$14.3	$16.4
% B-Piece Purchased	100.0%	100.0%	100.0%
% BBB- Purchased	58.8%	100.0%	69.3%
% A Purchased	0.0%	16.0%	0.0%
% AA Purchased	0.0%	0.0%	0.0%
Total Thickness Purchased	**9.7%**	**12.4%**	**10.3%**
AAA Thickness	78.031	78.031	78.031
AAA Px	$1.000	$1.000	$1.000
Implied IO Price	$0.079	$0.107	$0.086
Assumed IO BEY	5.000%	5.000%	5.000%
Incremental Coupon		0.354%	0.085%

APPENDIX 11: CREFC IG INVESTOR SURVEY RESULTS

CREFC IG Investor Survey Results
October 2013

Survey Introduction: The below CREFC surveys were conducted throughout October 2013. CREFC staff and the leadership of the CREFC IG Bondholders Forum crafted and approved background information and each question. All surveys were sent to CREFC IG Bondholders Forum Members and all CREFC members who were tagged as "IG Investors" in CREFC's database. Respondents include investors from large life insurance companies, banks, mutual funds, pension funds, and private investors, among others.

Question #	CREFC Survey #1 on SASB, Senior / Sub Structure, and OA-SS Removal Quorum - October 1, 2013	Number of Answers	Yes %	No %	Neutral %	
1	Single Borrower Single Asset Deals Question **Question: Are you supportive of CMBS Single Borrower Single Asset deals being exempt from the risk retention rule?**	31	77.4%	16.1%	6.5%	
2	Pari-Passu Structure Required when Two B-Piece Buyers Hold Horizontal Risk **Question: Are you supportive of additional flexibility so that two B-Piece Buyers have the option of using a senior/sub structure in addition to the pari-passu structure when they are holding the horizontal risk retention piece?**	31	67.7%	19.4%	12.9%	
3A	5% Voting Quorum to Replace Special Servicer Under the proposed rule, the Operating Advisor has the ability to recommend the replacement of the Special Servicer if it concludes both: (1) that the Special has failed to comply with any standard required of it, and (2) that removal would be in the best interest of the investors as a collective whole. Once the recommendation is made, bondholders are entitled to a vote. For the vote to count, there is a 5% quorum requirement. If that quorum requirement is satisfied, then, to replace the Special Servicer a majority of those voting (based on outstanding principal balance of all ABS interests) must vote for replacement. Here is a step-by-step explanation: 1) OA recommends replacement of the Special Servicer 2) Deal documents are expected to require notice of a vote to be provided to all bondholders for their participation in the vote 3) At least 5% of the outstanding principal balance of all ABS interests are needed to vote 4) A majority of the those voting is needed to approve the replacement of the Special Servicer **Question: Do you think 5% is the right voting quorum threshold?**	30	16.7%	56.7%	26.7%	
		Number of Answers	**Quorum of 10%**	**Quorum of 15%**	**Quorum of 20%**	**Any quorum threshold over 10% as long as a minimum of three investors voting?**
3B	**Question: If NO in Question #3, do you support any of the following?:**	20	15.0%	20.0%	45.0%	30.0%

Question #	CREFC Survey #2 on OA-SS Removal Quorum and OA Issues - October 16, 2013	Number of Answers	Yes %		No %
1A	**Question: Do you agree that a quorum vote must include a minimum of three investors?**	27	92.6%		7.4%
		Number of Answers	**10%**	**15%**	**20%**
1B	**Question: If YES to Question #1 and assuming at least three investors are voting, which do you think is the appropriate quorum threshold percentage?**	26	26.9%	23.1%	50.0%
		Number of Answers	**Yes %**		**No %**
2	Potential Conflicts. The re-proposal requires the OA to be independent with respect to the transaction parties. However, Operating Advisor firms often have affiliates or subsidiaries that serve as underwriters to issuers, diligence providers to B-Piece buyers, and consultants to loan borrowers. Engaging in these other businesses on an ongoing basis naturally creates conflicts of interest for the OA role. **Question: In order to avoid potential ongoing conflicts of interest with transaction parties, should the OA be prohibited from have any business services beyond the OA responsibilities with transaction parties on other deals? In other words, do IG bondholders believe the OA should be a fully independent party in the CMBS business?**	27	66.7%		33.3%
3	Compensation. It is widely accepted that the OA is undercompensated and the current fixed strip leaves even less compensation for the OA when their role becomes most critical. **Question: Should CREFC make a general comment in its response that the OA compensation should be in alignment with the financial interests and incentives of the OA and the certificate holders?**	27	59.3%		40.7%
4	OA Liability. Some OA's have commented that the indemnification from liability for their role needs strengthening to ensure their efficacy. **Question: Should CREFC advocate in its response for strengthened liability protections for OAs?**	27	63.0%		37.0%

Question #	CREFC Survey #3 on QCRE Parameters - October 22, 2013	Number of Answers	Yes %	No %
1	**Question: Do you think the QCRE definition should be changed from that defined in the re-proposal? In other words, do you think the share of loans that qualify for QCRE exemption should be allowed to rise from proposed level?**	29	69.0%	31.0%
2	**Question: If you believe that the share of CMBS loans that qualify for a QCRE loan exemption should be allow to rise from proposed levels, please tell us if you agree with following methods of allowing more loans to reach the exemption. Do you think that the QCRE loan definition should be changed to include those loans with 30 year amortization instead of limiting it to loans with 25 year amortization schedules?**	24	66.7%	33.3%
3	**Question: Do you think that the QCRE loan definition should be changed to allow loans of all maturity terms qualify for exemption instead of limiting the exemption to loans of 10 year loan terms or longer?**	24	75.0%	25.0%
4	**Question: Do you think that interest only loans of any maturity term but with LTV ratios of 50% or less should be exempt from risk retention?**	23	73.9%	26.1%

CRE Finance Council Member Companies

Level 1

AIG Investments
Alston & Bird LLP
Banc of America Securities
Barclays Capital Real Estate Inc
Berkadia Commercial Mortgage LLC
Berkeley Point Capital
BlackRock
Bloomberg L.P.
Bryan Cave LLP
C-III Capital Partners
Cadwalader, Wickersham & Taft LLP
CBRE Capital Markets, Inc.
CIBC World Markets Corp.
Citigroup Global Markets
Cleary, Gottlieb, Steen & Hamilton LLP
Clifford Chance US LLP
Cornerstone Real Estate Advisers LLC
Credit Suisse
CWCapital
DBRS, Inc.
Dechert LLP
Deloitte & Touche LLP
Dentons US LLP
Deutsche Bank Securities Inc.
DLA Piper LLP (US)
Eastdil Secured
Ernst & Young LLP
Fannie Mae
Fidelity Management & Research Co.
Fitch Ratings
Freddie Mac
GE Real Estate
GEMSA Loan Services, LP
Goldman, Sachs & Co.
J.P. Morgan
John Hancock Financial Services
Jones Lang LaSalle
Kaye Scholer LLP
KeyBank Real Estate Capital
Kilpatrick Townsend & Stockton LLP
LNR Property Corporation
Macquarie Bank Ltd.
Meridian Capital Group LLC
Metropolitan Life Insurance Co.
Moody's Investors Service
Morgan Stanley
Morningstar Credit Ratings, LLC
New York Life Investment Management
Nomura Securities International, Inc.
ORIX USA Corporation
Pacific Life Insurance Company
PNC Real Estate
PPM America, Inc.
PricewaterhouseCoopers LLP
Principal Global Investors
Proskauer Rose, LLP
Prudential Mortgage Capital Company
Royal Bank of Scotland
Schulte Roth & Zabel LLP
Seyfarth Shaw LLP
Sidley Austin LLP
Situs
Standard & Poor's Ratings Services
Starwood Capital Group
Teachers Insurance and Annuity Association
Trepp, LLC
U.S. Bank, NA
UBS Investment Bank
Venable LLP
Walker & Dunlop
Wells Fargo

Level 2

AEGON USA Investment Management, LLC
Allstate Insurance Company
Amherst Securities Group LP
Anderson, McCoy & Orta, P.C.
Andrews Kurth LLP
Arbor Commercial Mortgage, LLC
Auction.com
Ballard Spahr LLP
Barnes & Thornburg LLP
Bilzin Sumberg Baena Price & Axelrod, LLP
Brookfield Real Estate Financial Partners LLC
CCRE
DebtX
Duane Morris LLP
Genworth Financial
H/2 Capital Partners
Hunt Realty Investments, Inc.
Huntington National Bank
ING Investment Management
Intex Solutions, Inc.
IStar Financial
Kelley Drye & Warren, LLP
Kroll Bond Ratings
MBIA Insurance Corporation
McKenna Long & Aldridge, LLP
McKinley, Inc.
Morrison & Foerster LLP
Natixis Real Estate Capital
NCB, FSB/ A National Cooperative Bank Company
NorthStar Realty Finance Corp.
Oaktree Capital Management, L.P.
Polsinelli PC
Real Capital Analytics
Regions Financial Corp
Rockport
RR Donnelley
Shearman & Sterling LLP
Stinson Morrison Hecker LLP
Trimont Real Estate Advisors, Inc.
White and Williams LLP
Willkie Farr & Gallagher
Winstead PC

Level 3

1st Service Solutions
Aareal Capital Corp.
Accenture

APPENDIX 12: Member List

CRE Finance Council

CRE Finance Council Member Companies

Akin Gump Strauss Hauer & Feld LLP
Allen & Overy LLP
AllianceBernstein L.P.
Alvarez & Marsal Real Estate Advisory Services, LLC
American Capital Strategies, Ltd.
Andrascik & Tita LLC
Annaly Commercial Real Estate Group
Apollo Global Management
ARC Realty Finance Trust, Inc.
AREA Property Partners
Ares Management LLC
Assured Lender Services Inc.
Baker Donelson Bearman Caldwell & Berkowitz, P.C.
Bedrock Capital Associates LLC
Beech Street Capital, LLC
Beekman Advisors
Belgravia Capital
The Birdsey Group, LLC
The Blackstone Group
Brean Capital LLC
Brickman
Buchalter Nemer
Canopy Investment Advisors
CapitalSource
Carlton Fields
Cassin & Cassin LLP
Centerline Capital Group
CMBS.com
Cobb Partners
Cohen Financial
Cole Real Estate Investments
Colony Financial, Inc.
Cooper-Horowitz Inc.
CoStar - PPR
CPPIB Credit Investments Inc.
Craighead Law LLC
Crowell & Moring LLP
David L. Bonuccelli & Associates, Inc.
Duval & Stachenfeld LLP
Edwards Wildman Palmer LLP
Eightfold Real Estate Capital, L.P.
Ellington Management
Elliott Management Corporation
Exceder Real Estate Advisors, LLC
First Financial Network, Inc
Fox Rothschild LLP
FPL Advisory Group Co.
Frandzel Robins Bloom & Csato, LC
FTI Consulting
Goff Capital Partners
Greystone & Co.
GRS Group
Guggenheim Partners
Harbor Group Ltd
Haynes and Boone, LLP
Heitman, LLC
Hudson Realty Capital LLC
Hunneman Capital Group
Impact Community Capital LLC
Interactive Data
Invesco Real Estate
Investcorp International Inc.
Jefferies & Co.
JER Partners
Johnson Capital
K&L Gates LLP
Kasowitz, Benson, Torres, Friedman, LLP
Katten Muchin Rosenman LLP
Korn/Ferry International
KPMG LLP
KSL Capital Partners
Ladder Capital Finance
LEM Mezzanine, LLC
LoanCore Capital
Loeb & Loeb LLP
Lone Star, LLC
Lormax Stern Development Company, LLC
Lowenstein Sandler PC
Mayer Brown LLP
Mayersohn Law Group P.A.
MC Five Mile Capital Partners
McCarter & English, LLP
McCracken Financial Solutions Corp.
Mesa West Capital
Miller, Canfield, Paddock and Stone, P.L.C.
MKP Capital Management, L.L.C.
Morris, Manning & Martin, LLP
Newmark Grubb Knight Frank
Nixon Peabody LLP
O'Connor Cochran LLP
One William Street Capital Management, L.P.
Onyx Equities, LLC
Park Bridge Financial LLC
Paul Hastings LLP
PCCP
Pearlmark Real Estate Partners
Pentalpha Capital Group
Perkins Coie LLP
Pillar Financial, LLC
Pine River Capital
Prima Capital Advisors LLC
Prime Finance Partners
Promontory Interfinancial Network, Bank Assetpoint
Prudential Real Estate Investors
Putnam Investments
R.J. Finlay & Co.
RAIT Financial Trust
Raith Capital Partners
Redwood Trust, Inc.
Related Companies, LP
Resource Real Estate, Inc.
Rialto Capital Management
RLJ Lodging Trust
Rubin, Ehrlich & Buckley, P.C.
Sabal Financial Group LP
Seer Capital Management LP
Shorenstein Properties LLC
Sills Cummis & Gross PC
Spring Hill Capital Partners, LLC
Square Mile Capital Management, LLC
Stabilis Capital Management LP
Standish Mellon Asset Management

CRE Finance Council Member Companies

Stifel Nicolaus
StormHarbour Securities
Strategic Property Associates LLC
Summer Street Advisors, LLC
Sutherland, Asbill & Brennan LLP
T. Rowe Price Associates, Inc
Talmage, LLC
Thompson & Knight LLP
Thompson Hine LLP
Torchlight Investors
Townhouse Partners
TRIGILD
TriLyn LLC
Voit Real Estate Services
Walton Street Capital
Washington Holdings
Waterstone Asset Management
The Weitzman Group, Inc.
White Mountains Advisors LLC
Winston & Strawn LLP

CRE Finance Council, Written Testimony Exhibit C
HFS Capital Markets Subcommittee, February 26, 2014

CRE Finance Council
The Voice of Commercial Real Estate Finance

February 6, 2014

The Honorable Janet L. Yellen
Chairman, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Mary Jo White
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Thomas J. Curry
Comptroller of the Currency
U.S. Department of the Treasury
250 E Street, SW
Washington, DC 20219

The Honorable Jacob J. Lew
Secretary
United States Department of the Treasury, and
Chairman, Financial Stability Oversight Council
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

**Re: Single Borrower Single Credit Disclosure Framework
Proposed Rule, Credit Risk Retention
OCC Docket No. 2013-0010; Federal Reserve Docket No. R-1411; FDIC RIN 3064-AD74; SEC File No. S7-14-11; FHFA RIN 2590-AA43**

Ladies and Gentlemen:

On October 30, 2013, the Commercial Real Estate Finance Council ("CRE Finance Council" or "CREFC") submitted its comments on the proposed rule for credit risk retention for asset-backed securities,[1] which was jointly published by your respective agencies (collectively, the "Agencies") pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2]

[1] Proposed Rule, Credit Risk Retention, 78 Fed. Reg. 57928 (Sept. 20, 2013) (hereafter, "NPR" or "Proposed Rule").

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), Pub. L. No. 111-203, §941(b), 124 Stat. 1376, 1896 (2010) (creating Securities Exchange Act § 15G (i)(2)).

As part of those comments, we advocated for an exemption for Single Borrower/Single Credit ("SBSC") transactions,[3] and in our conversations with the Agencies, we agreed to provide a disclosure regime to ensure these transactions are transparent and to recommend a minimum deal size to which the exemption could attach. With respect to the minimum deal size, there is a strong consensus across both the issuers and the investors that $200 million is an appropriate threshold for the exemption. With respect to the requisite disclosure, there also is a strong consensus supporting the disclosure framework summarized in the attachments; we also developed proposed draft regulatory language that would implement that regime which is attached, as well. The process we used to develop these consensuses and the underlying logic for the proposals are discussed below.

The CRE Finance Council is the collective voice of the entire $3.1 trillion commercial real estate finance market. Its members include all of the significant portfolio, multifamily, and commercial mortgage-backed securities ("CMBS") lenders; issuers of CMBS; loan and bond investors such as insurance companies, pension funds, specialty finance companies, REITs and money managers; servicers; rating agencies; accounting firms; law firms; and other service providers.[4] Our industry plays a critical role in the financing of office buildings, industrial complexes, multifamily housing, retail facilities, hotels, and other types of commercial real estate that help form the backbone of the American economy.

One topic of discussion with Agencies' staff related to our comments surrounding SBSC transactions, in which we advocated for an exemption for such deals. Given that these transactions only involve one loan, and that historically, there has been no role for B-Piece Buyers, the CRE Finance Council believed that they should be treated differently that those transactions requiring risk retention. Additionally, for SBSC transactions, transparency is extremely high because granular loan details are reported to potential investors; and their loss experience has been exceedingly low – well below that of conduit CMBS and other asset classes – and has been more on par with non-securitized corporate bonds. There was a strong consensus among all CRE Finance Council members – including a majority consensus among the Investment-Grade Investors ("IG Investors") whom the retention rules are designed to protect – that these SBSC deals do not present the issues that the Proposed Rule is intended to address and therefore should be completely exempt from the risk retention rules.

In order to ensure such transparency that inherently creates low risk transactions, we are providing the attached regulatory language that constructs a disclosure regime for SBSC transactions. As with our original comments, the CRE Finance Council developed this language in consultation and with the input of various constituencies.[5] The result is a proposed disclosure

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[3] *See* Letter from CREFC to the Agencies (Oct. 30, 2013), at Part B.1, Page 13 (on file with the Agencies) ("Comment Letter").

[4] A complete CRE Finance Council Membership list is attached to the CREFC Comment Letter at Appendix 12.

[5] As explained in the Comment Letter, the CRE Finance Council operates member forums that are organized around each of our core market constituencies: IG Investors; B-Piece Investors; Issuers; Servicers; High Yield Investors; and Portfolio Lenders. The process of soliciting input from these forums is overseen and moderated

regime that has the support of the entire CMBS industry, including the investors that would be party to these SBSC transactions.

The regime was developed to address the concern that while there is disclosure in the 144A market, there should be a mandatory disclosure regime in place in order for SBSC transactions to be exempt from the risk retention rules. There are three pillars to this proposed disclosure regime. First, the disclosure requirements of a public CMBS offering shall be met, and the offering document must provide various disclosures, including:

(i) A summary of the material terms of the loan documents;
(ii) A description of the property or properties;
(iii) A description of the borrower, the borrower sponsorship and guarantors, and related ownership structure;
(iv) A summary of any material property management agreement, franchise agreement, and ground lease;
(v) A description of any material mezzanine, other subordinate debt, or preferred equity; and
(vi) An identification of material risk factors related to the loan or loans and the property or properties.

Second, the qualified investor will be entitled, upon request, to receive various additional information, including:

(i) Third party reports (i.e. appraisals, environmental reports, and engineering/building condition reports);
(ii) All loan documents, including the loan agreement, promissory note, cash management agreement, mortgage/security agreement, and property management agreement; and
(iii) Copies of financial statements.

Third, the proposed regime provides for a system of ongoing reporting, which would include the monthly CREFC Investor Reporting Package ("IRP") applicable to the transaction. As can be seen in the attachments, the IRP is a comprehensive document consisting of historical and current data, specific informational reports, and loan files.

Finally, in response to staff concern that very small SBSC deals could be used as a way to elude the applicability of the core retention regime, the CRE Finance Council is proposing a $200 million minimum deal size to qualify for the exemption in order to alleviate that concern.

The CRE Finance Council appreciates the amount of effort and work the Agencies have put forth in the development of the Proposed Rule, and in preparation of conversations about our Comment Letter. We have always valued the opportunity to work with the Agencies to further explain our ideas and to alleviate any concerns the Agencies may have with those ideas. The

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by the CRE Finance Council's Policy Committee, which is comprised of the leaders of each of the forums and certain members of CRE Finance Council's Executive Committee.

attached SBSC transaction disclosure regime should alleviate any concerns with exempting these deals from the risk retention framework, and we are happy to discuss at your convenience.

Sincerely,

Stephen M. Renna
President & CEO
CRE Finance Council

cc: The Honorable Shaun Donovan
Secretary
United States Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-0500

Mr. Edward DeMarco
Acting Director
Federal Housing Finance Agency
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Washington, DC 20024

SINGLE BORROWER/SINGLE CREDIT EXCEPTION

To be inserted within:

§ __.14 Definitions applicable to qualifying commercial loans, qualifying commercial real estate loans, and qualifying automobile loans.

Offering Document means the offering circular or memorandum made available to investors in connection with the offering of CMBS as part of a Single Borrower/Single Credit transaction.

Single Borrower/Single Credit transaction means a securitization of a single commercial real estate loan or a group of cross-collateralized or cross-defaulted commercial real estate loans that represent the obligation of one or more related borrowers secured by one or more commercial properties under direct or indirect common ownership or control, and satisfying the requirements set forth in §___.15(d).

To be inserted within:

§___.15 Qualifying commercial loans, commercial real estate loans, and automobile loans

(d) Exception for Single Borrower/Single Credit transaction. Single Borrower/Single Credit transactions shall be subject to a 0 percent risk retention requirement under subpart B, provided that:

(1) Offering Document Disclosures. The Offering Document shall:

(i) Generally satisfy the applicable disclosure requirements set forth in 17 C.F.R. § 229.1100, *et seq.*, except for the requirements in § 229.1112 insofar as it relates to the borrower or borrowers or the property of properties;

(ii) Contain:

(A) A summary of the material terms of the loan documents for the loan or loans underlying the Single Borrower/Single Credit transaction, including material terms of cash management arrangements;

(B) A description of the related property or properties, including the following information regarding the property or properties underlying the Single Borrower/Single Credit transaction for the preceding three years (or shorter period for which such information is reasonably available to the securitizer):

(1) Historical operating financial information; and

(2) Underwritten cash flow information for disclosed revenue and expense items;

(C) A description of the borrower, the borrower sponsorship and guarantors, and related ownership structure;

(D) A summary of any material property management agreement;

(E) A summary of any material franchise agreement;

(F) A summary of any material ground lease;

(G) If there is any material mezzanine debt, subordinated debt or preferred equity related to the property or properties, a description thereof and a summary of the material terms of any related intercreditor agreement; and

(H) Identification of material risk factors related to the loan or loans underlying the Single Borrower/Single Credit transaction, the related property or properties, and the related borrower or borrowers.

(iii) Disclose that the Single Borrower/Single Credit transaction is exempt from risk retention obligations in reliance on the Single Borrower/Single Credit transaction exception in §__.15(d).

(2) Additional Disclosures. In addition to the Offering Document satisfying the requirements set forth in §__.15(d)(1), the following additional information shall be made available in connection with the CMBS offering related to the Single Borrower/Single Credit transaction to prospective investors, upon their request, subject to clause (iii) of this paragraph (2):

(i) Copies of third party reports related to the property or properties underlying the Single Borrower/Single Credit transaction, including the:

(A) Appraisal(s);

(B) Environmental report(s); and

(C) Engineering/building condition report(s); and

(ii) Copies of material loan documents (except for the portions thereof subject to confidentiality obligations in favor of the related borrower or borrowers) for the loan or loans underlying the Single

Borrower/Single Credit transaction, including, to the extent applicable, the:

(A) Loan agreement;

(B) Promissory note;

(C) Cash management agreement;

(D) Mortgage and security agreement;

(E) Any material property management agreement;

(F) Agreements governing any mezzanine debt or subordinate debt preferred equity related to the property or properties underlying the Single Borrower/Single Credit transaction, including any related intercreditor agreement; and

(G) Material documents or information used by the originating lender in its underwriting of the loan, including but not limited to property tax bills and independent real estate tax analysis.

(iii) Notwithstanding the foregoing, the making available of the information set forth in clauses (i) and (ii) of this paragraph (2) may be conditioned on the prospective investor entering into a commercially reasonable confidentiality agreement.

(3) Ongoing Reporting. The agreement setting forth the requirements for ongoing reporting to CMBS investors in connection with the Single Borrower/Single Credit transaction shall require that the following information shall be made available to investors and prospective investors via the certificate administrator's or trustee's website (upon making applicable certifications) on an ongoing basis:

(i) Monthly distribution date statements prepared by the trustee or certificate administrator;

(ii) Monthly Commercial Real Estate Finance Council Investor Reporting Packages applicable to the transaction;

(iii) Notices of amendments to the loan documents for the loan or loans underlying the Single Borrower/Single Credit transaction, requests for termination of the related special servicer, and other material items of the type required under Form 10-D, pursuant 17 C.F.R. § 240.13a-17, for the Single Borrower/Single Credit transaction, except for the requirements in 17 C.F.R. § 229.1112 insofar as it relates to the borrower or borrowers;

(iv) Periodic financial information furnished by the borrower or borrowers pursuant to the loan agreement;

(v) Annual assessments of compliance with servicing criteria and related public accounting firm attestation reports for entities performing a servicing function as contemplated by 17 C.F.R. § 229.1122 and servicer compliance statements as contemplated by 17 C.F.R. § 229.1123; and

(vi) Any updates to the reports listed in subparagraph (2)(i) of this paragraph, if required to be obtained pursuant to the servicing agreement for the Single Borrower/Single Credit transaction.

To be inserted within:

§___.17 Underwriting standards for qualifying CRE loans.

(c) Exception. The provisions of this section shall not apply to Single Borrower/Single Credit transactions.

CREFC REQUESTED EXEMPTION FOR SINGLE BORROWER DEALS

CREFC requests that Single Borrower/Single Credit transactions be exempted from the credit risk retention rules (the "Single Borrower/Single Credit Exemption").

A "Single Borrower/Single Credit" ("SBSC") transaction would be defined as "A securitization of a single commercial real estate loan or a group of cross-collateralized commercial real estate loans that represent(s) the obligation of one or more related borrowers secured by one or more commercial properties under direct or indirect common ownership or control, and satisfying the following Disclosure Requirements in connection with the related securities offering."

SBSC transactions are substantially similar to, and compete directly with, the whole loan lending activities of portfolio lenders with the further refinement that SBSC transactions allow capital markets investors to purchase higher risk and correspondingly higher yielding, subordinate interests in such loan(s). Current disclosure requirements for these transactions offer 144A investors robust disclosure measures. If SBSC transactions are to be exempted from risk retention under Dodd-Frank, the disclosure requirements for SBSC transactions ought to mirror the disclosure requirements generally required by portfolio lenders. This will ensure investors continue to be provided with material information to assess the concentrated credit risks within SBSC transactions.

DISCLOSURE REQUIREMENTS:

I. Offering circular or memorandum (the "Offering Document") will generally satisfy the disclosure requirements of a public CMBS offering:

   A. All Regulation AB requirements for CMBS transactions (to the extent applicable) will be satisfied, except for the requirement for Regulation S-X financial statements required under Item 1112 of Regulation AB.

   B. The Offering Document will disclose historical operating financial information for the property or properties for the preceding 3 years (or such shorter period for which such information is reasonably available), together with underwritten cash flow information for disclosed revenue and expense items.

   C. Securitization due diligence/disclosure obligations under Rule 193 (implementing Section 945 of Dodd-Frank Act) will be satisfied.

   D. The Offering Document will provide the following disclosures regarding the loan or loans and the property or properties due to asset/credit concentration:

      - A summary of the material terms of the loan documents, including material terms of cash management arrangements

      - A description of the property or properties

- A description of the borrower, the borrower sponsorship and guarantors, and related ownership structure

- A summary of any material property management agreement

- A summary of any material franchise agreement

- A summary of any material ground lease

- If there is material mezzanine, other subordinate debt, or preferred equity, a description thereof and a summary of the material terms of any related intercreditor agreement

- Identification of material risk factors related to the loan or loans and the property or properties

II. After entering into an industry standard confidentiality agreement, any otherwise qualified investor will be entitled, upon request, to receive the following additional information:

A. Copies of third party reports:

1. Appraisal
2. Environmental Report
3. Engineering/Building Condition Report

B. Copies of all relevant loan documents (except for portions thereof subject to confidentiality obligations), including but not limited to the following:

1. Loan Agreement
2. Promissory Note
3. Cash Management Agreement
4. Mortgage/Security Agreements
5. Property Management Agreements
6. Documents and Agreements governing material mezzanine or other subordinate debt
7. Other material employed in the underwriting of the loan, including but not limited to property tax bills, independent real estate tax analysis, etc.

C. Copies of financial statements and rent rolls, to the extent required to be provided by the borrower to the loan seller.

III. The Offering Document would disclose that the transaction is exempt from risk retention obligations in reliance on the Single Borrower/Single Credit Exemption.

IV. Ongoing Reporting.

The following regular reporting and ad hoc information would be made available to investors and prospective investors (upon delivery of applicable certifications):

A. Monthly Distribution Date Statements

B. Monthly CREFC Investor Reporting Package (IRP) applicable to the transaction, which is required per the CMBS loan documents (See Appendix 1 for detailed reporting and information provided by IRP)

C. Notices of amendments to the mortgage loan documents, requests for termination of special servicer, and other material items of the type required under Form 10-D

D. Annual Assessments of Compliance with Servicing Criteria and related Public Accounting Firm Attestation Reports

E. Periodic financial information furnished by the borrower that is required under the loan agreement

F. If required to be obtained pursuant to the applicable servicing agreement, updated appraisal reports and environmental assessments