Statement of:

Tom Deutsch
Executive Director
American Securitization Forum

Testimony before the:

Committee on Financial Services
Capital Markets and Government Sponsored Enterprises Subcommittee
United States House of Representatives

Hearing on:

H.R. _____, the Private Mortgage Market Investment Act

November 3, 2011

TABLE OF CONTENTS

Chairman Garrett, Ranking Member Waters and distinguished Members of the Subcommittee, my name is Tom Deutsch and as the Executive Director of the American Securitization Forum (the "ASF")[1], I very much appreciate the opportunity to testify here regarding the proposed Private Mortgage Market Investment Act on behalf of the 330 ASF institutions who originate, structure, trade, service, invest[2] and serve as trustee for the preponderance of residential mortgage-backed securities ("RMBS") created in the United States, including those backed entirely by private capital as well as those guaranteed by public entities such as Fannie Mae, Freddie Mac and Ginnie Mae (for the purposes of this testimony, collectively, the "Government-Sponsored Enterprises" or "GSEs").

I. Introduction

Let me begin my remarks by stating what I believe to be a near consensus proposition—there is very strong political and economic will in the United States today to decrease the overall level of federal government involvement in housing finance, and to have more private capital eventually replace many of the risks and rewards of that involvement. Given that 90+% of mortgage loans made in America in the first half of 2011 were guaranteed by the GSEs, there certainly isn't a shortage of opportunity to achieve this goal. The value of the U.S. housing stock is an estimated $16.1 trillion with an estimated $9.75 trillion of single-family home mortgage

---

[1] The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. More information regarding the ASF can be found at www.americansecuritization.com.

[2] The vast majority of investors in the securitization market are institutional investors, including banks, insurance companies, mutual funds, money market funds, pension funds, hedge funds and other large pools of capital. Although these direct market participants are institutions, many of them—pension funds, mutual funds and insurance companies, in particular—invest on behalf of individuals, in addition to other account holders.

loans outstanding.[3] There are approximately 55 million first lien mortgages outstanding in the United States today and an additional 25 million homes that have no mortgage attached to them. Approximately $7 trillion dollars of outstanding mortgage debt resides in securitization trusts and are beneficially owned by institutional investors around the world. Approximately $5.5 trillion dollars of these loans are government-guaranteed in GSE RMBS, with an additional $1.5 trillion in outstanding private-label RMBS that have no government backstop. An additional $2.75 trillion dollars of mortgage debt is owned in the portfolios of commercial banks, savings institutions and insurance companies. In addition to the $9.75 trillion of outstanding first lien mortgages, approximately $1 trillion of second liens are currently outstanding in the United States.[4]

To date though, Fannie Mae and Freddie Mac have drawn $169 billion in support from the American taxpayer through the Department of the Treasury since they were placed under conservatorship and are predicted by the Federal Housing Finance Agency ("FHFA") to draw a total ranging from $220 billion to $311 billion by the end of 2014.[5] Few, if any, mortgage market participants expect Fannie or Freddie to be able to repay any material portion of those draws. Given these substantial losses and the outsized role of the GSEs in today's U.S. mortgage finance system, ASF's membership believes that there is a clear need to reduce the federal government role in securitization going forward. While there is little opportunity for an overnight transition, there is a strong need to begin that transition as soon as possible to rework

[3] B.100 Balance Sheet of Households and Nonprofit Organizations from Federal Reserve Z.1 Statistical Release for the Second Quarter for 2011.

[4] Data compiled by Amherst Securities, based on information from the Federal Reserve Flow of Funds, Fannie Mae, Freddie Mac, Ginnie Mae and CoreLogic.

[5] See the FHFA's October 2011 report, "Projections of the Enterprises' Financial Performance," at http://www.fhfa.gov/webfiles/22737/GSEProjF.pdf.

and restore long-term health to the capital markets for mortgages and the broader housing market.

Reducing dependence on public guarantees for new mortgage origination necessarily implies that private capital investment in mortgage originations will have to be reinvigorated. Securitization is an absolutely essential funding mechanism for this to occur, as evidenced by observing the significant proportion of consumer credit it has financed in the U.S. in the last few decades. Securitization generally refers to the process by which consumer and business assets are pooled into securities that are issued and sold into the capital markets. The payments on those securities depend primarily on the performance of the underlying assets. Over the past 25 years, securitization has grown from a relatively small and unknown segment of the financial markets to a mainstream source of credit and financing for individuals and businesses, representing a vital sector of the financial markets.[6] It is estimated that securitization has funded between 30% and 75% of lending in various markets, including an estimated 59% of outstanding home mortgages, as of 2008.[7]

Although large and small bank portfolios have continued to help fund some level of mortgage origination outside of the GSE business, that level has not been sufficient to meet overall consumer demand and reinvigorate the housing market. Securitization is critical to bank balance sheets; therefore, in light of capital and liquidity constraints currently confronting financial institutions and markets globally, restoration of function and confidence to the

---

[6] For more information on the role and importance of securitization to the financial system and US economy, see ASF Reg AB II Comment Letter, Attachment II, pg. 143-147 (August 2010), available at http://www.americansecuritization.com/uploadedFiles/ASFRegABIICommentLetter8.2.10.pdf.

[7] Citigroup, "Does the World Need Securitization?" pg. 10-11 (Dec. 2008), available at http://www.americansecuritization.com/uploadedFiles/Citi121208_restart_securitization.pdf.

securitization markets is a particularly urgent need. With the process of bank de-leveraging and balance sheet reduction still underway, and with increased bank capital requirements on the horizon, such as those expected in Basel III, the funding capacity provided by securitization cannot be replaced with deposit-based financing alone in the current or foreseeable economic environments. In fact, the International Monetary Fund ("IMF") estimated that a financing "gap" of $440 billion existed between total U.S. credit capacity available for the nonfinancial sector and U.S. total credit demand from that sector for the year 2009.[8] Although key legislative initiatives such as covered bonds[9] may help extend the balance sheets of banks to fund additional mortgages, there will still be outer limits of bank risk and capital that constrain the availability of needed mortgage and consumer credit.

Since the rapid deflation of the housing bubble starting in 2007, many individuals have asked whether market participants would support eliminating the government guarantee over an extended period of time, and ultimately what the mortgage market would look like without a guarantee. This is an extremely difficult, if not impossible, question to answer without some initial evolution in the mortgage system. Because the U.S. mortgage market has grown up for nearly a century around the presence of a government guarantee, breaking down institutional buildup and rebuilding investor demand in new products will take time. But a mortgage market where 90+% percent of all mortgages currently originated have some form of government support is neither sustainable nor desirable, and Congress must take steps to substantially reduce the government's role in mortgage finance. This must be done responsibly so that greater

[8] International Monetary Fund, "The Road to Recovery." Global Financial Stability Report: Navigating the Financial Challenges Ahead (Oct. 2009), pg. 29, available at http://www.imf.org/external/pubs/ft/gfsr/2009/02/pdf/text.pdf.
[9] For ASF's March 11, 2011 testimony before the House Committee on Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises regarding covered bonds legislation, see http://www.americansecuritization.com/uploadedFiles/ASF_HFSC_Covered_Bond_Testimony_3_11_11.pdf.

dislocation doesn't occur within our nation's fragile housing market. There are many aspects of Chairman Garrett's legislation that work toward this goal and that ASF supports, particularly with respect to appropriate standardization and ensuring respect and clarity for applicable laws. We appreciate the opportunity today to discuss some of the key details of this proposal.

II. Transitional Concerns Related to the GSEs

Getting from our current state of the GSEs to some future state will require some appreciable time measured in years for the transition. The length of time of this transition may vary widely depending on how dramatic that transformation is and how the existing assets and infrastructure of the GSEs are used.[10]

Increasing guarantee fees through legislation such as H.R. 1222 proposed this spring by Congressman Neugebauer and the reduction in conforming loan limits that just occurred at the end of September represent two specific shorter term mechanisms through which to reduce this reliance. These guarantee fees are charged by the GSEs to lenders as compensation for servicing, selling, guaranteeing, and providing information on the underlying loans. Last September, the FHFA released its annual report on guarantee fees, which found that the pricing of these fees often subsidizes the GSEs' guarantees on some single-family mortgages.[11] Therefore, raising these fees will serve to encourage fairer competition with the private sector. Additionally, reducing conforming loan limits can serve to decrease reliance on the GSEs, as fewer properties will qualify for the lower interest rates on conforming mortgages backed by a federal guarantee, thereby also increasing competition with the private market.

[10] For additional information on ASF's views on transition and guarantee issues, please see ASF's September 2010 testimony at http://www.americansecuritization.com/uploadedFiles/ASF_HFSC_Testimony_09.29.10.pdf.
[11] For the FHFA report, see www.fhfa.gov/webfiles/22642/2011GFeeReportFinal.pdf.

III. Key Reasons for Lack of Private Securitizations

A. Death by a Thousand Regulatory Cuts

While ASF is generally supportive of many individual securitization market regulatory reform initiatives, we believe that it is important to consider the overwhelming volume and cost of these initiatives to market participants when set forth simultaneously. In addition to the significant burdens posed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") risk retention requirements and the Bureau of Consumer Financial Protection's ("CFPB") qualified mortgage ("QM") regulation, discussed below, the RMBS and consumer asset-backed securities ("ABS") market is currently facing a barrage of regulatory initiatives from the Securities and Exchange Commission ("SEC"), Federal Deposit Insurance Corporation ("FDIC"), Board of Governors of the Federal Reserve System ("FRB"), and Commodity Futures Trading Commission ("CFTC"), as well as from the radical rework of risk-based capital requirements under Basel III. Attachment A of this testimony provides a dizzying visual representation of the number of regulatory initiatives currently challenging the restart of the securitization market. The large number and high cost of these regulatory initiatives threatens ongoing paralysis of the securitization market, as many current market participants and potential new entrants are choosing to sit on the sidelines while policymakers take years to reform the size and shape of the full regulatory scheme. Even more concerning, given the size of the housing finance market, it is difficult to see how the broader U.S. economy can significantly improve until uncertainties around these issues are resolved and securitization returns. In our May, 2011 U.S Senate testimony, we articulated many of the most pressing regulatory issues currently confronting the securitization industry.[12] But even since May, a number of additional policy initiatives[13] have been proposed that will further weigh on the industry or even crush some sectors or subsets of the securitization markets, including:

- Volcker Rule
- Conflicts of Interest
- Basel 2.5 and III
- Rating Agency Reform
- Regulation AB II ("Reg AB II") Proposals and Re-Proposals
- Regulation of Derivatives

In addition to the issues listed above, there are a number of other impediments to private capital returning to the residential mortgage market. First, the GSEs continue to subsidize the vast majority of the residential mortgage market, and therefore maintain a substantial competitive advantage by under-pricing credit risk. Second, banks are utilizing deposits as a very low-cost way to fund residential mortgages on balance sheet, making it a better execution method than securitization. Finally, many investors that invested during the crisis have been slow in returning, and have demanded greater yield in order to participate in this space.

[12] See testimony of ASF Executive Director Tom Deutsch delivered to the Senate Committee on Banking, Housing, and Urban Affairs ("SBC") Subcommittee on Securities, Insurance, and Investment ("Securities Subcommittee") on May 18, 2011, available at: http://www.americansecuritization.com/uploadedFiles/ASF_Senate_Banking_Securitization_Testimony_5-18-11.pdf.

[13] Additional summary information on ASF's concerns related to these proposals may be found at: http://www.americansecuritization.com/uploadedFiles/New_Regulatory_Initiatives.pdf.

IV. Discussion of H.R. ____, the "Private Mortgage Market Investment Act"

A. Standardization

i. Replication of Existing TBA Market

The first key goal of Chairman Garrett's legislation appears to be to increase standardization and uniformity within the secondary mortgage market by, among other things, requiring the FHFA to prescribe uniform underwriting standards. These standards would attempt to replicate much of the liquidity function of the so-called "To-Be-Announced" ("TBA") market. There shouldn't be any underestimation of the importance of maintaining the TBA market. Although not well understood outside the housing finance industry, the TBA market makes it possible for borrowers to have the peace of mind of locking in favorable mortgage rates and originators' immediate and liquid sale in the capital markets. A TBA is a contract for the purchase or sale of GSE MBS (e.g., $50 million Fannie Mae 5.5% MBS in December) to be delivered at a future, specified date, sometimes substantially (up to 90 days) in advance of the settlement date. For a variety of reasons discussed more fully in ASF's comment letter submitted last summer to the Departments of Treasury and Housing and Urban Development in response to the July 21, 2010 request of those Departments,[14] there are significant challenges to replicate a TBA market outside of the GSEs.

The TBA market is possible for two reasons: first, the fungibility of the conforming loan product, which is a standardized product with established and uniform underwriting guidelines and form documentation, and, second, the effect of the GSE guaranty, which serves to equilibrate

[14] See http://www.americansecuritization.com/uploadedFiles/ASFGSEReformCommentLettertoTreasury-7.21.10.pdf.

credit risk of all of the securitized MBS. It is the guarantee function that attracts so-called "rates investors" because of the absence of underlying credit risk within the securities.

For a variety of reasons, it is difficult to replicate a TBA market outside of the GSEs, though not necessarily impossible in the long-term. Although certain solutions may be appropriate and necessary for the overall health of the residential mortgage system, they pose unique challenges for the current TBA market. For a more fulsome discussion of these highly technical and detailed matters, I direct your attention to the July 21, 2010 ASF comment letter referenced above, but as issues related to managing forward interest rate risk, an originator of a mortgage loan that is intended for inclusion in a private label RMBS has typically protected itself from market interest rate changes between origination and securitization by various mechanisms, which have included, for example: 1) a commitment to purchase that loan at a set price from the entity that intends to sponsor the securitization, or 2) an interest rate hedge, if the originator will be the sponsor or is otherwise exposed to market interest rate risk. While these types of mechanisms have their cost and effectiveness limitations (it is frequently said that there is no such thing as a perfect hedge), these types of mechanisms that have been used in the past should be sufficient to protect originators from interest rate risk on a going forward basis as the private label RMBS markets recover.

Before I move on, however, I must point out that any reform of the GSEs which does not accommodate, or suitably replace, the existing GSE MBS TBA market will undoubtedly impact mortgage originators and borrowers both severely and negatively.

ii. Securities Act Registration Exemption

If the ultimate bill includes a mandate for a waiting period and loan-level disclosure for all registered MBS (or if the SEC's Reg AB II proposals are enacted), any attempt to emulate the TBA offering process would have to include an exemption from registration. The furnishing of enhanced loan-level data to investors is inconsistent with the operation of the TBA market. A forward market cannot have true loan-level disclosure, because the loans have not actually been identified as of the trade date and subsequently delivering loans conforming to a set of exacting criteria, such as the SEC's Reg AB II loan-level fields, would not be possible. Even if ranges were included to aid an issuer's ability to deliver conforming loans, investors would have to assume the bottom of the range would ultimately be included in the pool. A five day waiting period would also be inconsistent with the current construct of the TBA market, because additional time is generally not necessary to evaluate assets that are truly fungible.

iii. FHFA as Private-Label Standard Setter

As stated previously, the Garrett legislation contemplates the FHFA to establish uniform underwriting standards. There are clearly advantages and disadvantages to having the FHFA, or any other government agency, set these standards. A clear advantage is that bright-line underwriting standards will bring additional clarity and certainty with respect to the underwriting of mortgage loans. However, we have concerns with government involvement in setting underwriting criteria as it could, over time, become susceptible to political interference, such as pressure to achieve increased homeownership in particular segments of the country or access to credit for certain borrowers. If the goal of the legislation is to promote robust private capital without government involvement, then it may be advisable to move some of the standard-setting process to private market participants or leave it to evolving market practice. This could be accomplished in a variety of different ways, including a "standards board" comprised of issuers and investors.

B. Alignment of Incentives

During the recent economic crisis, some commentators questioned whether mortgage loan originators adequately mitigated or retained sufficient risk in the loans they were making to borrowers, especially when those loans were sold into securitization trusts. These critics pointed to a lack of "skin in the game," which they believe misaligned incentives between originators and investors and failed to ensure the loans underlying were of adequate credit quality.

ASF supports efforts to align the incentives of issuers and originators with investors of ABS and we believe these incentives should encourage the application of sound underwriting standards by both the originator and securitizer in connection with the assets that are securitized. ASF began the process to better align incentives over three years ago, when we launched our Project on Residential Securitization Transparency and Reporting ("Project RESTART"),[15] which is a broad-based industry-developed initiative to help rebuild investor confidence in mortgage-backed securities. It has been recognized by senior policymakers and market participants as a necessary industry initiative to improve the securitization process by developing commonly accepted and detailed standards for transparency, disclosure and diligence that each

[15] For more information on ASF Project RESTART, see http://www.americansecuritization.com/restart.

appropriate market participant will be recommended to implement.[16] As part of this effort, ASF developed a set of model representations and warranties (the "ASF Model Reps")[17] aimed at infusing transparency and comparability across securitization transactions and a set of RMBS repurchase principles (the "ASF Repurchase Principles")[18] for investigating, resolving and enforcing remedies with respect to representations and warranties in RMBS transactions involving newly originated mortgage loans. These two initiatives combine to create a very strong alignment of incentives between issuers and investors in RMBS transactions and are flexible enough to allow for appropriate changes in the market over time. As part of Dodd-Frank, Congress also decided to address alignment of incentives, but opted to employ credit risk retention and tasked a team of regulators (the "Joint Regulators") with implementing regulations that would effect "skin in the game," but still permit appropriate access to credit.

While ASF believes that appropriate risk retention rules can aid in achieving a proper alignment of incentives, we believe it is far more critical that "skin in the game" be implemented for future RMBS transactions through appropriate representations and warranties coupled with an effective repurchase mechanism. We also believe that the rules proposed by the Joint

[16] In its March 2008 Policy Statement on Financial Market Developments, the President's Working Group (the "PWG") on the Financial Markets recommended that ASF develop templates for disclosure in securitization that support efforts to improve market discipline and on June 24, 2008, Acting Under Secretary for Domestic Finance Anthony W. Ryan announced that the PWG had engaged ASF as the private sector group to develop best practices regarding disclosure to investors in securitized credits. Most recently, Fed Governor Sarah Bloom Raskin commended ASF's Model Reps and Repurchase Principles in an October 4, 2011 speech. See http://www.treasury.gov/resource-center/fin-mkts/Documents/pwgpolicystatemktturmoil_03122008.pdf, http://www.treasury.gov/press-center/press-releases/Pages/hp1053.aspx, and http://www.federalreserve.gov/newsevents/speech/raskin20111004a.htm.

[17] See http://www.americansecuritization.com/uploadedFiles/ASF_Project_RESTART_Reps_and_Warranties_121509.pdf.

[18] See http://www.americansecuritization.com/uploadedFiles/ASF_Model_RMBS_Repurchase_Principles.pdf.

Regulators[19] are not sufficiently tailored to the various asset classes that are securitized and will likely cause a host of negative unintended consequences, some of which are described below.

i. ASF Concerns with Proposed Risk Retention Rules

In drafting the proposed rules, the Joint Regulators indicated that they had taken into account the diversity of assets that are securitized, the structures historically used in securitizations, and the manner in which securitizers may have retained risk. Despite those efforts, substantial work still needs to be done to evolve the proposed risk retention rules into workable solutions that will not inhibit securitization. What is at stake is the risk of significant reductions in the availability of auto loans, mortgages, student loans, credit cards, and commercial credit all across America. Given that many engines of the U.S. economy are still sputtering and unemployment remains extremely high, ASF advocates strongly that these rules not overreach to attempt to "fix" sectors of the securitization markets that did not see any losses during an extreme economic downturn and instead are now powering economic revival in some areas of the economy. Attempts to realign incentives in many types of securitization structures, where those incentives have demonstrated through strong performance to be well-aligned between issuer and investor, only serve to risk harm to the American economy, consumers and investors.

The proposed risk retention rules create such a risk to the securitization market that some have advocated the concept be eliminated altogether. In fact, Chairman Garrett's proposed bill would strike the risk retention provisions of Dodd-Frank, rendering the proposed rules moot.

[19] See http://www.sec.gov/rules/proposed/2011/34-64148.pdf.

ASF believes that our substantial comments to the Joint Regulators should enable them to revise the proposed risk retention rules to tailor the provisions to the various asset classes in order to promote a healthy securitization market. However, if the Joint Regulators were unable or unwilling to implement a substantial portion of our recommendations to allow many MBS and ABS to continue forward, ASF would likely endorse the outright removal of risk retention from Dodd-Frank.

a. ASF's Previous Comments on Risk Retention

In an effort to ensure that risk retention is implemented properly, ASF has submitted hundreds of pages of comments including: (i) a series of preliminary comment letters last year supporting the proposal of risk retention requirements that are tailored to each major asset class, including RMBS, auto ABS, asset-backed commercial paper ("ABCP"), credit card ABS, student loan ABS and corporate debt repackagings; (ii) a comprehensive comment letter in response to the Joint Regulators' proposed risk retention rules; and (iii) a supplemental comment letter addressing the proposed "qualifying automobile loan" exemption.[20] Additionally, ASF previously delivered its views on this subject to Congress during a hearing of the House Committee on Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises entitled, "Understanding the Implications and Consequences of the Proposed Rule on

[20] For more information on ASF's risk retention advocacy and the preliminary comment letters, see http://www.americansecuritization.com/story.aspx?id=4884, for our comprehensive comment letter, see http://www.americansecuritization.com/uploadedFiles/ASF_Risk_Retention_Comment_Letter.pdf, and for our supplemental comment letter addressing the "qualifying automobile loan," see http://www.americansecuritization.com/uploadedFiles/ASF_Auto_QAL_Comment_Letter_8_1_11.pdf.

Risk Retention"[21] and a subsequent hearing of the Senate Banking Committee's Subcommittee on Securities, Insurance & Investment entitled, "The State of the Securitization Markets."[22]

In these comment letters and testimony, our membership sought to highlight the intricacies of each asset class and stress the need for risk retention requirements that are tailored to each class of securitized assets. These views are consistent with Dodd-Frank's directive to implement "separate rules for securitizers of different classes of assets" and reflect the primary recommendation of both the Board of Governors of the Federal Reserve System in its October 2010 Report on Risk Retention[23] and the Financial Stability Oversight Council, chaired by Treasury Secretary Timothy F. Geithner, in its January 2011 study.[24]

We believe that the proposed risk retention rules missed the mark in many key areas and failed to achieve the recommendations of the risk retention studies mandated by Dodd-Frank. In particular, there are areas within the proposed risk retention rules that will greatly inhibit a healthy private securitization market, particularly with respect to residential mortgages, and for these reasons, we continue to believe that a re-proposal is necessary to ensure that the Joint Regulators get the final risk retention rules right. We highlight the areas of greatest concern below.

[21] See "ASF Risk Retention Testimony Before HFSC," American Securitization Forum (April 14, 2011), available at http://www.americansecuritization.com/uploadedFiles/ASF_HFSC_Risk_Retention_Testimony_4-14-11.pdf.

[22] See "ASF Senate Banking Testimony," American Securitization Forum (May 18, 2011), available at http://www.americansecuritization.com/uploadedFiles/ASF_Senate_Banking_Securitization_Testimony_5-18-11.pdf.

[23] See http://federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.pdf, pg. 3, 83-84. "In light of the heterogeneity of asset classes and securitization structures, practices and performance, the Board recommends that rulemakers consider crafting credit risk retention requirements that are tailored to each major class of securitized assets."

[24] See the FSOC Study, pg. 3, available at: http://www.treasury.gov/initiatives/wsr/Documents/Section%20946%20Risk%20Retention%20Study%20%20%28FINAL%29.pdf. A risk retention framework should "[a]lign incentives without changing the basic structure and objectives of securitization transactions; [p]reserve flexibility as markets and circumstances evolve; and [a]llow a broad range of participants to continue to engage in lending activities, while doing so in a safe and sound manner."

b. Premium Capture Will Greatly Inhibit Mortgage Securitization

The proposed premium capture rule exceeds the mandate and legislative intent of Dodd-Frank by adding on to the 5% risk retention requirement the entire value of ABS issued in a securitization over par—effectively nullifying the securitizer's entire return and recoupment of costs associated with the transaction. The rule as proposed will have pervasive effects on securitization and borrowers, including assuring the accounting consolidation of the securitization onto the balance sheet of the securitizer regardless of the risk retention form employed, effectively making securitization another form of balance sheet lending, which as noted above, is incapable of supporting the housing market. In Section VIII.A.vi.b. of our comprehensive risk retention comment letter, we describe a hypothetical securitization of a single loan and explain how the cost associated with premium capture would result in the loan's interest rate being approximately 2.00% higher, and its monthly payment being approximately 24% higher, than would otherwise be the case. This is consistent with recent research done by Mark Zandi, Chief Economist of Moody's Analytics, who stated that "[a]s a result of the way the premium capture rule is stated, the mortgage rate impact to borrowers would be significant—on the order of an increase of 1 to 4 percentage points depending on the parameters of the mortgages being originated and the discount rates applied."[25]

The premium capture rule also fails to take into account the cost of origination of loans, including out-of-pocket costs such as appraisals and title insurance, as well as the originator's overhead and profit on sale. In addition, the rule would interfere with an originator's or sponsor's ability to use interest rate hedges during the period between origination and

[25] See http://www.americansecuritization.com/uploadedFiles/2011-09-21_Zandi_A-Clarification-of-Risk.pdf.

securitization, which would likely prevent originators from offering borrowers rate locks for the period between application and funding. Finally, the harsh impacts of the premium capture rules will be most severe for low and moderate income borrowers with less than prime credit histories, because securitizations of loans to such borrowers create significant amounts of excess spread. This will result in credit being less available to, and more expensive for, low to moderate income mortgage borrowers.

Most disturbing, however, is that the premium capture rule as currently proposed eliminates virtually all incentives to securitize for institutions other than those that securitize purely for financing. Institutions with other sources of funding will move away from securitization altogether, resulting in a constriction of credit and an increased cost of capital.

c. Proposed QRM Will Constrict Credit and Increase Cost

The highly conservative nature of the qualified residential mortgage ("QRM") definition will likely limit the availability, and increase the cost, of mortgage credit to consumers, particularly to those with low to moderate incomes. The risk retention proposing release indicates that approximately 19.79% of all loans purchased or securitized by the GSEs during the period 1997-2009, and approximately 30.52% of loans in 2009 alone, would have met the QRM criteria. In the current market, even highly creditworthy borrowers are continuing to experience difficulties in obtaining mortgage financing, as uncertainty in the world financial markets in general and the mortgage market in particular make obtaining credit difficult. This problem will be substantially exacerbated, and the availability of mortgage credit to consumers will suffer, if the QRM definition is not either expanded to include a greater percentage of the mortgage market or, as we have stressed in our comprehensive comment letter, modified to allow QRM loans and non-QRM loans to be included in the same securitization pools.

The QRM exemption to the risk retention requirements is only available if all the loans underlying the securitization are QRMs. This requirement effectively splits the securitization market into transactions backed by QRMs and transactions backed by non-QRMs. We are concerned that it may not be possible for sponsors to originate QRMs in numbers sufficient to generate the critical mass of loans necessary for economically efficient securitizations, which would invariably increase the cost of such loans. In order to alleviate this risk, we support establishing a “QRM blend” exception that would allow QRMs to be included in a pool that also contains non-QRMs, in a way that preserves the 0% risk retention requirement on the QRM portion of the pool and the 5% risk retention requirement on the non-QRM portion of the pool. The 5% risk retention requirement on the entire securitization would then be ratably reduced by the proportion of the total pool that meets the QRM standards. This would meet all the goals of the risk retention rules, while at the same time maintaining the feasibility of securitizing QRMs and avoiding the increased costs to borrowers that would follow if such securitizations were not economically efficient. We believe that this exception would be consistent with the statutory framework of Dodd-Frank.

d. Servicing Standards

The inclusion of servicing standards in the QRM definition goes well beyond the legislative intent of Dodd-Frank and its mandate for including criteria relating to underwriting and product features. There is no evidence, either in the legislative history or the language of

Dodd-Frank, that Congress intended to include servicing standards as part of risk retention rules. In fact, incorporating servicing standards into the QRM definition would have the peculiar result of regulating the servicing of the highest quality borrowers, those with the least risk of encountering servicing issues or needing loss mitigation, while the bulk of the market, consisting of borrowers with a greater need for loss mitigation, would be left unregulated. We believe that this effort should not be rolled out on a piecemeal basis, and instead support the separate interagency effort currently underway to develop national servicing standards that will benefit all borrowers of residential mortgage loans.

e. Reliance on GSEs Will Increase

Since the time the GSEs were placed into conservatorship, their economic significance has only increased, and they, along with the Federal Housing Administration ("FHA"), guarantee 90+% of American mortgages, as the private label MBS market continues to lie dormant. The proposed risk retention rules would impose significant burdens on issuers of private label MBS but provide that the implicit 100% taxpayer guarantee is a suitable form of "skin in the game" for the GSEs, effectively exempting them from the proposed risk retention rules. Securities guaranteed by the GSEs will be able to be securitized free from the risk retention requirements (including the premium capture rule and the resulting accounting issues) irrespective of whether such securities are QRMs, which will result in the non-QRM loans backing such securities having lower costs to borrowers and more attractive terms than similar loans offered by private market participants. This will have the effect of increasing the portion of the residential mortgage market dominated by the GSEs, further entrenching the importance of their role in such market. This will make it substantially more difficult for Congress to carry out its efforts to restructure or wind down the GSEs, since a substantial percentage of consumers will be wholly dependent on the GSEs to provide them with affordable mortgage financing.

ii. Reps and Enforcement Mechanisms Should Be Priority for RMBS

Without exception, our investor, originator and issuer members view appropriate representations and warranties and effective enforcement provisions as significant risk retention for RMBS transactions. In fact, ASF believes that risk retained through representations and warranties results in an even greater amount of skin in the game than the 5% risk retention mandated by Dodd-Frank because a repurchase is for 100% of the loan's unpaid principal balance. Furthermore, the principal goal of any risk retention initiative should be to establish and reinforce commercial incentives for originators to create and fund mortgage loans that conform to stated underwriting standards and other securitization eligibility criteria, thereby making those parties economically responsible for the stated attributes and underwriting quality of securitized loans. Our RMBS issuer and investor members strongly agree that the ASF Repurchase Principles effectively achieve that goal, and in a more direct manner than the proposed risk retention rules.

Appropriate "skin in the game" for securitization transactions begins with representations and warranties, which are used to allocate the origination risk of mortgage loans between the issuers of the securities and the investors who purchase them. Generally, if a loan is found to have breached the representations and warranties and such breach is sufficiently material, the loan can be "put back" or returned to the seller who is obligated to repurchase it, essentially effecting a 100% risk retention. Much like a defective product would be returned to the store from which it was sold, a materially defective mortgage loan would be returned to the issuer or other representing party through its removal from a securitization trust for the applicable repurchase price (or a qualified substitute loan, if applicable).

Historically, the type and form of representations and warranties included in RMBS transactions varied greatly, and investors often expressed concerns about their inability to compare the representations and warranties provided by different issuers. The ASF Model Reps were developed primarily to express customary market representations and warranties in the same, transparent language across transactions and provide a “baseline” against which investors and rating agencies can measure the representations and warranties contained in a particular transaction. Securitization transactions vary based on many factors, including the underlying collateral, the associated transaction parties, the types of bonds issued and the ultimate investors. Securitization investors have differing needs and risk tolerances and depending on the transaction, investors and/or issuers may be willing or unwilling to assume certain risks or certain representations and warranties simply may not be relevant. Because transactions can vary greatly, parties are free to determine which of the Model Reps are appropriate for a transaction and whether modifications to the language or form of the Model Reps should be made. The purpose of the Model Reps is to allow market participants to easily determine whether departures from the Model Reps have occurred and whether knowledge qualifiers were used, adding transparency to the negotiation process among the parties to a given transaction and enabling issuers and investors to more easily and better assess their willingness or unwillingness to assume origination risks.[26] The Model Reps also provide more significant protections by reworking the language of the representations and warranties contained in existing RMBS transactions and including many new provisions which did not previously exist.

Many investors believe that the repurchase process set forth in most existing securitization contracts does not provide applicable parties with an adequate means to pursue a repurchase demand nor does it effectively specify mechanisms to identify breaches or resolve a question as to whether a breach occurred. For these reasons, our membership began working towards the ASF Repurchase Principles to delineate a consensus framework for enforcing remedies with respect to representations and warranties in RMBS transactions by, among other things, establishing the role of a new "independent reviewer" that will have access to the files of applicable mortgage loans to determine if a breach has occurred and requiring a robust mechanism for the investigation and resolution of disputes regarding breaches of transaction representations and warranties. The basic elements of the framework involve (i) review of pool assets by an independent third party that is given access to the loan files for compliance with representations and warranties following the occurrence of an agreed-upon "review event," (ii) recommendation by the independent third party to the securitization trustee of whether or not to demand repurchase of, or substitution for, the pool asset by the representing party and (iii) if the

[26] We also note that Dodd-Frank and recent rules issued by the SEC require each nationally recognized statistical rating organization ("NRSRO") to include in any report accompanying a credit rating a description of (i) the representations, warranties, and enforcement mechanisms available to investors; and (ii) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities.

representing party disputes the independent third-party's findings, submission of the dispute to a binding dispute resolution process.[27]

ASF believes that the strong third-party mechanism set forth in the ASF Repurchase Principles will ensure that representations and warranties in future RMBS transactions are subject to a clearly defined enforcement mechanism, with the beneficial effect of causing asset originators to exercise caution in underwriting and deterring transfers of substandard assets to securitization vehicles. ASF has recommended that all future RMBS transactions of newly-originated mortgage loans include a repurchase framework that is consistent with the ASF Repurchase Principles. Finally, our members would have concerns with any regulator-produced model that strayed from these core principles, which market participants spent over six months discussing and refining.

C. Legal Certainty

i. Subordinate Liens

Another goal of Chairman Garrett's legislation is to remove so-called "conflicts of interest" between servicers and investors where servicers service the first lien, and hold the second lien on portfolio. Often the contract for the second lien is consummated sometime after the first lien, and the first lien holder is unaware both of the existence of the second lien as well as the holder of the second lien. This is why the second lien is often referred to as a "silent second." Although our investor and originator/servicer members remain split as to the ultimate

[27] We believe that the ASF Repurchase Principles would be generally consistent with the re-proposed conditions for shelf eligibility for ABS proposed by the SEC on July 27, 2011 if the SEC were to incorporate the comments we submitted on October 4, 2011. See the SEC's proposal at http://www.sec.gov/rules/proposed/2011/33-9244fr.pdf and our comments at http://www.americansecuritization.com/uploadedFiles/ASF_Comment_Letter_on_SEC_Reg_AB_II_Re-Proposal_10-4-11.pdf.

impact of this issue with respect to the crisis, it is clear the second lien transaction remains a blind spot to first lien investors.

ii. Mandatory Principal Write-Downs

ASF strongly supports the measure in Chairman Garrett's legislation that would prevent regulators from unilaterally forcing investors to reduce the principal balance of loans in which they have invested. ASF believes that borrowers, investors, and issuers should be allowed to work together to modify mortgages as they deem appropriate. While some ASF members have chosen to engage in limited principal reduction initiatives to maximize net present value on highly select loans, we believe that, lacking an explicit directive from Congress, any federal regulatory initiative to force investors to take losses as part of a mandatory principal reduction scheme is poor public policy and ultimately violative of basic contract law.

Industry participants have deployed and will continue to deploy aggressive efforts to prevent as many avoidable loan defaults and foreclosures as possible. No securitization participant—including lenders, servicers, and investors—benefits from these foreclosures. However, across-the-board mandatory principal reduction is not the solution to this challenge. In modifying troubled mortgages, reducing a borrower's principal balance creates perverse incentives for homeowners to strategically default on their mortgages in order to lower their overall cost. Investors and taxpayers, who are effectively Fannie Mae and Freddie Mac investors over the course of their federal conservatorship, stand to lose enormously, as the value of their secured assets would necessarily be trimmed. Indeed, Fannie and Freddie, propped up by the taxpayers, would be the hardest hit firms, as they currently command the vast majority of the mortgage market. We note that the FHFA, as Fannie and Freddie's conservator, has consistently resisted calls for principal reduction in an effort to protect taxpayers from these losses.

The idea of a principal reduction scheme has most recently been suggested as an element of the settlement talks currently being conducted among bank servicers and several federal agencies and state attorneys general.[28] Our institutional investor members are strongly opposed to any settlement for alleged servicing violations that investors had no control over that requires loans owned by investors to be modified or written down, particularly if write downs on subordinate liens weren't mandated in greater proportions. We believe that the circumstances of individual borrowers require modification options that are best worked out among borrowers, servicers, and investors, not through government mandate, in whatever form it may come. Put simply, housing policy cannot be solved with one-size-fits-all regulatory decrees.

Moreover, mandating principal write-downs as a sanction for any servicing improprieties, but against the interests of the investors that provide capital for new loans, would serve only to reinforce investors' uncertainty with respect to the legal rights and obligations under securitization contracts. Uncertainty around these rights and the rule of law in the broader securitization market remains one of the greatest obstacles to bringing new money back into the marketplace. For investors and the private market to return and replace taxpayers and Fannie and Freddie, the rule of law around securitization contracts must be honored and enforced. Until investors' fears over these issues are put to rest definitively, the recovery of the housing market, and with it the broader economy, will remain stalled.

[28] See Morgenson, G. (October 29, 2011). A Deal That Wouldn't Sting. *The New York Times*, available at http://www.nytimes.com/2011/10/30/business/a-foreclosure-settlement-that-wouldnt-sting.html.

For the above reasons, ASF fully supports Chairman Garrett's measure to restrict regulators from forcing principal reductions on loans owned by investors.

iii. Third Party Trustee

ASF supports efforts to ensure that trustees for mortgage-backed securities transactions are independent from the sponsors of such transactions. Section 101(g) of Chairman Garrett's bill provides that at all times there be one or more trustees for pools of mortgages that act as collateral for qualified securities, and that the Director issue rules requiring that such trustees be qualified and be independent using the same requirements as set forth in the Trust Indenture Act of 1939 (the "Trust Indenture Act"). ASF notes that these provisions are consistent with practice today on all private label RMBS transactions, both for publicly offered securities that are not governed by the Trust Indenture Act (transactions in which the securities are issued pursuant to a pooling and servicing agreement or a trust agreement) as well as transactions that are not publicly offered. This is the case in part because of legal constraints (such as the requirements of the Investment Company Act of 1940 or ERISA), as well as because of investors requiring that there be an independent trustee. Thus, even when the legal constraints mentioned above do not apply, RMBS transactions do not occur without an independent trustee.

Regarding the reporting of claims requirement of the bill, ASF believes that such a requirement does not pose a large burden on the trustees, but there would need to be more clarity as to what constitutes a claim against a sponsor. ASF notes that Section 943 of the Dodd-Frank Act already provides that securitizers are required to report when a noteholder requests that a loan be repurchased because of a breach of a representation or warranty with respect to such loan. That information is required to be reported regardless of whether the transaction is privately or publicly held. Also, such claims are typically not made against the sponsor, but against some intermediate entity that is owned by the sponsor.

The bill also contains provisions attempting to protect investor rights, and which require each trustee to maintain a list of investors and to be a means for investors to communicate with each other. These provisions in their current form will have some significant implementation difficulties to improve investor communications because the trustees do not have access to that information. In most RMBS transactions, the Depository Trust Company ("DTC") is the registered owner of the securities. DTC holds the securities as the nominee of financial institutions ("DTC Participants"), which hold the securities for themselves, for their customers (the ultimate "Beneficial Holders") or for other financial institutions which in turn hold the securities for themselves or their customers. Sometimes Beneficial Holders do not hold the securities in their own name, but instead hire a custodian bank to hold the securities on their behalf. The only information a trustee can get from DTC is the name of the DTC Participants. The only way that the trustees can obtain the information that appears to be required by Subsection (g)(5) would be to have an additional requirement that every Beneficial Holder inform the applicable trustee of the securities it holds. Another way to address this may be to require Beneficial Holders to inform DTC of their identities and allow investors and/or trustees to access the lists through DTC. DTC does charge a fee to the trustees each time they request a participant list, so updated inquiries will certainly increase the costs of the transaction. Although this may not be a large amount for each transaction, depending on how often a trustee would need to update the list through DTC, but the amount would be quite large over all RMBS transactions. Another challenge with the provision is that it is not clear what it means to facilitate communications among investors, or how this could be done while complying with the requirement that the trustee not make the list of investors available to other investors. As a prophylactic measure, protections should be put in place to ensure that the trustees are not responsible for the content of the communications by investors.

Regarding the independent third party, the provisions in the bill will help codify practice on some transactions and raise many additional questions. Current practice is that if investors want to review files of collateral in an MBS transaction, they contact the trustee and arrange, at their own expense, to have the files reviewed by an accounting or other type of firm that has expertise in reviewing collateral files. The holders then report the findings of the review to the trustee and/or the sponsor or servicer of the transaction, which leads to a negotiation with the sponsor or another entity responsible for the representations and warranties in the transaction. This process is not always smooth, as historical agreements have not typically provided details about how this should be dealt with by the parties. The language in the bill would help clarify for trustees (and/or the related custodians of the mortgage files) that they have an obligation to provide access to the files. However, one key challenge for the market to address is who is required to pay for the review or whether the trustee is expected to monitor the process or make any decisions with respect to the scope of the review or monitoring of the third party to ensure that it followed the procedures established for the review.

iv. QM Safe Harbor

The qualified mortgage rule was originally proposed by the FRB, but responsibility for the final rule was transferred to the CFPB on July 21, 2011. The proposed rule establishes the "qualified mortgage" as a standard for complying with Dodd-Frank's requirement that lenders make a reasonable determination that a consumer has the ability to repay a mortgage loan. The proposal contemplates and requests comment on two levels of protection for meeting the standard, one resulting in a "safe harbor" from liability and the other resulting in a presumption of compliance that could later be rebutted.

As a threshold issue, ASF believes it is essential that the final rule minimize the legal risk to investors in residential mortgage loans. Liquidity in the residential mortgage market relies on investors that reasonably believe that loans are enforceable in accordance with their terms, without unnecessary impairment due to assignee liability or an inability to realize on the collateral. To achieve this critical goal, the proposed rule must be revised in two ways.[29]

First, the QM definition includes subjective and vague factors that will make it difficult or even impossible to determine, at the time a loan is made, whether or not the loan qualifies as a QM. For instance, Dodd-Frank specifies that a QM is a residential mortgage loan "for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented." An originator may indeed exert a reasonable, good faith effort to verify and document a consumer's income and financial resources in underwriting a loan, but without any clear-cut standards for accomplishing that task, the originator and the investors in the loan may

[29] To see all of our comments on the QM rule proposal, please see http://www.americansecuritization.com/uploadedFiles/ASF_Comments_on_Ability_to_Repay_QM_Proposed_Rule_7_22_11.pdf.

be subject to second-guessing. Second, ASF strongly recommends that the CFPB provide an actual safe harbor that provides the legal certainty for originators and loan investors that Dodd-Frank intended. An after-the-fact finding of non-compliance with the QM rule would result in substantial liability for investors and other assignees down the capital markets chain. Reasonable access to credit will depend upon the outcome of the QM, as liability concerns may prevent lenders from originating mortgage loans that fall outside the standard.

D. Transparency and Disclosure

i. Loan-Level Disclosure

ASF has become the market leader in promoting transparency for private label RMBS securitizations. On July 15, 2009, ASF released final versions of the first two deliverables of Project RESTART, a disclosure package of loan-level information to be provided by issuers prior to the sale of private-label RMBS transactions (the "Disclosure Package") and a reporting package of loan-level information to be updated on a monthly basis by RMBS servicers throughout the life of an RMBS transaction (the "Reporting Package"). Both of these packages increase and standardize critical data at issuance and throughout the life of a transaction, which will enable investors to better perform deal and loan-level analysis on the basis of the credit quality of the underlying mortgage loans. By increasing data and standardizing available information, institutional investors will be able to better distinguish pools of high quality loans from lesser quality pools.

The release of the Disclosure and Reporting Packages was timely given the Administration's proposals for regulating financial markets in the summer of 2009 and the introduction of financial regulatory reform legislation later that year. The Dodd-Frank Act specifically calls for issuers of ABS to disclose "asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence." Not long before the passage of the Dodd-Frank Act, the SEC proposed Reg AB II, which includes loan-level RMBS disclosure and reporting proposals as originally contemplated and designed by Project RESTART. ASF has commented extensively both on Reg AB II and on the SEC's re-proposals of certain of the provisions of Reg AB II issued this summer, and we generally concur with both the substance and format of the SEC's proposed rules regarding disclosure of asset-level information for RMBS transactions, although we have also proposed some specific modifications.[30]

ii. ASF LINC

In connection with the development of the Disclosure and Reporting Packages, ASF also created a unique loan identification number, known as the ASF LINC™, for securitization reporting purposes to facilitate the monitoring of assets from origination through the securitization process.[31] ASF's LINC™ would serve as an effective model for the alphanumeric identification code for loans called for in Chairman Garrett's bill. One of the problems in the securitization market has been the inconsistent fashion in which assets have been identified. In a typical mortgage securitization, the originator, primary servicer, master servicer and trustee could all assign different numbers to identify the loan on each particular system. Implementation of the ASF LINC™ remedies this problem by assigning numbers that will be standard across the

[30] For ASF's 172 page Reg AB II Broad Comment Letter, see http://www.americansecuritization.com/uploadedFiles/ASFRegABIICommentLetter8.2.10.pdf. For ASF's comment letter regarding the Reg AB II re-proposals, see http://www.americansecuritization.com/uploadedFiles/ASF_Comment_Letter_on_SEC_Reg_AB_II_Re-Proposal_10-4-11.pdf.

[31] To view a sample of the code and a graphical depiction of its structure, see http://www.americansecuritization.com/uploadedFiles/ASF_LINC.pdf.

entire industry, enabling market participants to track an asset throughout its life regardless of who holds legal title to or services it at any particular time. ASF also released an RMBS Bond-Level Reporting Package consisting of data fields that provide enhanced and standardized reporting of bond-level information throughout the life of an RMBS transaction.

iii. Cooling-Off Period

Chairman Garrett's bill includes a provision requiring that preliminary prospectuses containing all material terms be filed five days before investors make an investment decision in ABS. This proposal is similar to a Reg AB II proposal by the SEC to require an asset-backed issuer using a shelf registration statement to file a preliminary prospectus containing substantially all required information at least five business days in advance of the first sale of securities. We appreciate Chairman Garrett's and the SEC's goal of providing investors with adequate information and time to make an investment decision. However, our issuer and investor members uniformly agree that a mandatory waiting period of five calendar or business days is appreciably too long, providing investors with considerably more time than is necessary to analyze most ABS transactions and exposing issuers and investors to market risk for a minimum, in the case of the SEC's proposal, of an entire week (five business days effectively equates to seven calendar days), and longer in the case of waiting periods that include holidays.

Most ABS are done as "shelf" transactions that are part of a program of issuances by a securitizer that is well known to the marketplace, and are conducted by means of a prospectus prepared at the time of the issuance that supplements the information included in the prospectus filed as part of a shelf registration statement. For example, in the case of revolving asset master trusts (such as credit cards), the prospectus filed as part of the registration statement typically includes detailed information concerning the legal structure of the program and transactions, the securitizer's credit-granting or underwriting criteria and the composition and performance of the pooled assets, including historical and static pool information. In the case of amortizing asset pools (such as auto loans), while information regarding the transaction structure and specific assets comprising the asset pool is not known until the time of the issuance, the marketplace is typically familiar with the securitizer's credit-granting or underwriting criteria as well as historical and static pool information relating to the securitizer's managed portfolio and prior securitized pools.

Thus, while it is the case that, for the most part, each ABS offering involves securities backed by different assets (obvious exceptions being revolving asset master trusts such as credit card master trusts), our issuer and investor members agree that a five calendar or business day waiting period is too long. Our investor members indicate that they have the staff and expertise to evaluate most ABS shelf transactions within two business days. In the more limited cases where a transaction or structure is unfamiliar or more complex, investors indicate that they can and do insist on more time before they make an investment decision. Conversely, in cases where a transaction or structure is very familiar, our investors agree that they need considerably less time before they make an investment decision.

Moreover, our issuer and investor members agree that a mandatory minimum waiting period that is too long unnecessarily interferes with market mechanics, to the detriment of issuers and investors, by artificially delaying pricing and the formation of contracts of sale and exposing issuers and investors to the vagaries of market movements that may be adverse to one or the other. For all of these reasons, our issuer and investor members agree that a two business-day waiting period would strike a more appropriate balance between the needs of investors and the interests of issuers than a five business day waiting period, and we have communicated this fact to the SEC in our broad Reg AB II comment letter.[32] However, we do not believe it is appropriate to include any particular time period in the proposed bill, as Congress may not be nimble enough to modify the time period should evidence arise that such period is too long or too short. Instead, we suggest leaving the exact length of the waiting period to the SEC, which is in a better position than Congress, based on extensive market commentary, to monitor and react to changes in the ABS market.

iv. TRACE Dissemination

ASF is also supportive of efforts to increase the transparency of structured finance products and markets, particularly through expanding the scope of Trade Reporting and Compliance Engine ("TRACE") reporting requirements. Therefore, ASF views favorably Chairman Garrett's goal of disseminating transaction, volume, and pricing information of trades in ABS through TRACE, as outlined in Section 203 of his legislation. ASF has in the past provided detailed comment and recommendations for the implementation of a more comprehensive reporting regime for transactions using TRACE.[33] We believe that improvements to the regulatory reporting of trades of securitized products to the Financial

[32] The SEC's proposal would also have called for a five business day waiting period in the case of a material change in the information provided in the preliminary prospectus. In response to that proposal, our issuer and investor members agreed that, if a mandatory minimum waiting period is to be imposed at all, a one business-day waiting period is more appropriate. However, issuers and investors also agree that even a one business day waiting period is too rigid and may be unnecessarily long in many cases.

[33] For ASF's November 18, 2009 comment letter to the SEC regarding TRACE reporting, see http://www.americansecuritization.com/uploadedFiles/ASF_SIFMA_ResponseFinraTRACE_ABS_SR-FINRA-2009-065_2009-11-18.pdf.

Industry Regulatory Authority ("FINRA") through TRACE can provide an opportunity for greater clarity with regard to the securitization market, a necessary component of the reestablishment of normal levels of credit availability.

V. Conclusion

The ASF has been a strong and vocal advocate for targeted securitization market reforms and we seek to continue to work constructively with policymakers to identify and implement them. We applaud the willingness of the Chairman to convene this hearing to continue to push forward the discussion of the future of the U.S. mortgage finance system. We greatly appreciate the invitation to appear before this Subcommittee to share our views. I look forward to answering any questions the Subcommittee may have.

Thank you.

ATTACHMENT A

D-F Title II – Uncertainty about covered financial companies and subsidiaries and remarkably broad rulemaking and receivership powers afforded to FDIC (FDIC 76 FR 41627)

D-F Sec. 941 and Risk Retention – Disincentives to fund through private-label securitization because of uneconomic premium capture, conservative QRM definition, forced accounting consolidation, liberal GSE exemption, uneven national servicing standards, deviations from market practice, and narrow carve-outs (IA NPR 76 FR 24090)

Money Market Reform – Focus on ultrasafe assets (deposits and sovereigns) and ultrashort maturities (SEC 75 FR 10060)

D-F Sec. 619 – Volcker Rule Restrictions on Sec. 3(c)(1) and 3(c)(7) Issuers (IA ___FR ___)

Borrowers

Businesses

Households

Governments

FDIC Securitization Safe Harbor – Threat to traditional legal-isolation standards unless onerous and unrelated conditions are met (FDIC 75 FR 60287)

TILA Amendments and CFPB Actions – Economic and compliance costs passed on to households and potential for inadequate legal certainty to strangle credit (FRB NPR 76 FR 27390 et al)

FAS 166 and 167 – Misdirected incentives because financial-components approach abandoned and consolidation based on power rather than risks and rewards (IA 75 FR 4636)

Basel III and D-F Sec. 171 – Misdirected incentives if all banks (regardless of size and foreign exposure) are not subject to the most advanced generally applicable risk-based capital requirements (IA 76 FR 37620)

Basel III LCR – Drawdown assumptions ignore borrowing bases in secured facilities (No NPR Yet)

Basel III NSFR – Unequal treatment for MBS and ABS with stable value and liquidity (No NPR Yet)

Basel III LCR – Drawdown rates lack any credit conversion factors based on actual crisis experience and bank, customer, and exposure profiles (No NPR Yet)

Securitization

Asset-Backed Commercial Paper

Term Mortgage-Backed and Asset-Backed Securities

Basel III LCR – Skewed incentives because Level 2 assets exclude highest-quality MBS and ABS but include covered bonds (No NPR Yet)

Basel 2.5 – Ambiguously broad definition of resecuritization position (IA NPR 76 FR 1890)

D-F Sec. 942 and Regulation AB II – Costly burdens associated with eligibility standards, shelf registration, disclosure, reporting, and privately issued structured-finance products (SEC NPR 75 FR 23328 and 76 FR 47948)

D-F Sec. 331 – Increase in DIF assessments for larger banks; incentives to issue long-term unsecured debt; disincentives to hold bank unsecured debt (FDIC 76 FR 10672)

Reform of Fannie Mae and Freddie Mac

Basel III LCR – Uncertain treatment for GSE debt (No NPR Yet)

SEC Rule 3a-7 – Foundational review (SEC ANPR 76 FR 55308)

Basel III LCR – Lack of diversity in Level 1 and Level 2 assets (No NPR Yet)

Investors

Money Market Funds

Non-Money-Market Mutual Funds

Pension and Other Retirement Funds

Insurance Companies

Hedge Funds

Financial Institutions

LESS AVAILABLE AND MORE EXPENSIVE CREDIT

MORE COSTLY INVESTMENTS

Basel III Leverage Ratio – Inclusion of off-balance-sheet commitments results in duplicative capital because of the LCR (No NPR Yet)

Basel III LCR – Stressed three-notch downgrade ignores rating's starting point (No NPR Yet)

Basel III Capital – Securitization gains excluded from CET 1 (No NPR Yet)

Basel III Capital – 1250% risk weight for low-rated securitization exposures forces higher bank capital (No NPR Yet)

Basel III Countercyclical Capital – Failure to distinguish among credit exposures gives rise to higher risk-based capital costs for markets without excessive credit or risk (No NPR Yet)

Basel III LCR – Closed banking and financial systems ignored in cash outflow run-off rates and assumed cash inflow (No NPR Yet)

Basel III LCR – Disparate treatment for SPVs in drawdown rates for credit and liquidity facilities (No NPR Yet)

Basel III LCR – Unclear distinction between securitization and secured funding in cash outflow (No NPR Yet)

D-F Sec. 731, 761, 763, and 764 – Ambiguity for SPVs and structured-finance swaps in definitions, clearing provisions, end-user exceptions, and margin/capital requirements for non-cleared swaps (IA NPR 75 FR 80174, SEC NPR 75 FR 82490, SEC NPR 75 FR 79992, CFTC NPR 75 FR 80747, IA NPR 76 FR 27564, CFTC NPR 76 FR 23732, and CFTC NPR 75 FR 80638)

D-F Sec. 939A – Misdirected incentives if ratings alternatives do not capture actual risk based on observed performance (Basel III (No NPR Yet) and MMF (SEC NPR 76 FR 12896))

Contradictory or Competing International Standards

D-F Sec. 939B – Removal of Regulation FD Exemption for Rating Agencies (SEC 75 FR 61050)

D-F Sec. 939G – Repeal of SEC Rule 436(g) on NRSROs

Basel III Capital – Limits on MSRs in CET 1 biased against U.S. banks (No NPR Yet)

Basel III LCR – Projected lack of supply for Level 1 and Level 2 assets (No NPR Yet)

SEC Rule 17g-5 – Non-Hired NRSROs

D-F Sec. 945 – Issuer Due Diligence, Asset Review, and Disclosure (SEC 76 FR 4231)

D-F Sec. 932 – Disclosure of Third-Party Due-Diligence Reports (SEC NPR 76 FR 33420)

D-F Sec. 943 – NRSRO Description of Reps and Warranties and Issuer Disclosure of Repurchase Activity (SEC 76 FR 4489)

D-F Sec. 621 – Bar on Material Conflicts of Interest with Investors (SEC 76 FR 60320)

D-F Sec. 939F – System for Assigning NRSROs to Rate Structured-Finance Products (SEC RFC 76 FR 28265)

D-F Sec. 942 – Highly Limited Suspension of Post-Issuance Reporting (SEC 76 FR 52549)

American SECURITIZATION FORUM®

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Tom Deutsch	American Securitization Forum
3. Business Address and telephone number:	
[redacted]	
4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☑ No	☐ Yes ☑ No
6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.	
7. Signature: Tom Deutsch	

Please attach a copy of this form to your written testimony.