30 October 2013

Department of the Treasury
Office of the Comptroller of the Currency (OCC)
Docket Number OCC-2013-0010
By email: regs.comments@occ.treas.gov

Board of Governors of the Federal Reserve System
Docket No. R-1411
By email: regs.comments@federalreserve.gov

Federal Deposit Insurance Corporation
RIN 3064-AD74
By email: Comments@FDIC.gov

Securities and Exchange Commission
File No. S7-14-11
By email: rule-comments@sec.gov

Federal Housing Finance Agency
RIN 2590-AA43
By email: RegComments@fhfa.gov

Department of Housing and Urban Development
RIN 2501-AD53
By electronic submission: www.regulations.gov

Re: Credit risk retention – Response to the Agencies on the proposed rule - OCC (Docket Number OCC-2013-0010) / FRB (Docket No. R-1411) / FDIC (RIN 3064-AD74) / SEC (File Number S7-14-11) / FHFA (RIN 2590-AA43) / HUD (RIN 2501 – AD53)

On behalf of the Association for Financial Markets in Europe (**AFME**) [1] and its members, we welcome the opportunity to comment on the proposed rule on credit risk retention put forward on 28 August 2013 (the **Proposed Rule**) by the Office of the Comptroller of the Currency, the Board of Governors of the Federal

[1] AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME was formed on 1 November 2009 by the merger of the London Investment Banking Association and the European operations of the Securities Industry and Financial Markets Association. AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA) and is an affiliate of the US Securities Industry and Financial Markets Association (SIFMA) and the Asian Securities Industry and Financial Markets Association (ASIFMA). AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

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Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the Federal Housing Finance Agency and the Department of Housing and Urban Development (together, the **Agencies**) to revise the proposed rule published by the Agencies on 29 April 2011 (the **Original Proposed Rule**) and to implement the requirements of section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **Dodd-Frank Act**).

Our response focuses on the key considerations raised by the Proposed Rule from the perspective of European market participants, including those who may seek to fund securitisations of European assets by issuing asset-backed securities to US persons. As such, in keeping with our previous advocacy work on the US risk retention regime,[2] the comments set out below relate primarily to matters which present particular challenges for European transactions.

We wish to stress the global nature of the asset-backed market and the corresponding issues which would arise if the Agencies adopted rules which did not take account of the views of non-US market participants. While the Proposed Rule is, understandably, primarily domestic in focus, it is essential in the interests of global comity to bear in mind that the maintenance and inter-relationship of free and open markets across borders should continue to benefit all issuers and investors, whether in the US or elsewhere.

The interaction of the requirements contemplated by the Proposed Rule with those which apply under the existing EU risk retention regime is a source of significant focus for AFME members. Given the way in which the EU regime and the proposed US regime are framed, in general, it will be necessary for market participants to comply with both the EU and the US requirements if they wish to place deals on a cross-border basis. The liquidity implications of this, as well as the critical importance of preserving securitisation as a global funding tool for real economy assets, mean that the ability to comply with both regimes in a manner which does not compromise the economic efficiency of relevant cross-border transactions is an area of key concern.

Although it is difficult to provide precise figures as to the level of reliance on US offering regimes (such as Rule 144A, Regulation D or Section 4(2) of the US Securities Act of 1933) by European market participants given the private nature of the market, industry estimates (calculations by AFME, based on Dealogic data) suggest that up to 25 percent of total issuance of European originated securitisations was offered in reliance on Rule 144A prior to the financial crisis. In addition, the Rule 144A regime has played an important role in recent years in the success of UK originated RMBS issues and certain other transactions. AFME has polled several members who have issued RMBS into the US market in reliance on Rule 144A over recent years and it appears that the proportion of bonds placed with US investors varies considerably (being in part driven by wider funding and market conditions) but is, in many cases, well above pre-crisis levels. Please refer to Annex I for more detailed information on the importance of access to USD liquidity for European issuers in the context of certain recent transactions.

It should also be highlighted that, because the EU retention framework restricts investment in a securitisation by relevant EU regulated entities (including EU regulated banks and their consolidated entities) unless an eligible interest is retained in accordance with the framework, such entities are

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[2] To view our response letter to the Original Proposed Rule and our follow-up letters, please see the links below.

http://www.federalreserve.gov/SECRS/2011/October/20111027/R-1411/R-1411_071911_82446_471858155990_1.pdf
http://www.sec.gov/comments/s7-14-11/s71411-318.pdf
http://www.federalreserve.gov/SECRS/2012/April/20120427/R-1411/R-1411_041612_107179_566986220723_1.pdf

prohibited from acquiring non-compliant asset-backed securities (regardless of the jurisdiction of origination and, in the absence of mutual recognition on the part of the EU authorities, regardless of whether an interest is retained in accordance with another regime). This means in effect that EU banking group entities may be restricted from providing liquidity and market-making functions in the US securitisation market unless the EU regime is also complied with. Since EU banks issue and trade a large share of US securitisations, the inconsistencies between the EU and US rules (discussed below) run the risk of significantly reducing lending and liquidity activity in the ABS market. We consider that US firms could not easily replace the capacity and expertise offered by EU banks, meaning that, in the absence of coordination between the US and EU authorities, costs of lending overall could rise, liquidity could decline and the overall economy could suffer.

Notwithstanding the European and cross-border focus of this response, our members have expressed concerns relating to certain general matters referred to in the Proposed Rule. In this regard, our working group members (comprised primarily of issuers/originators, arrangers and legal advisers) support many of the general concerns raised by originator, sponsor and dealer members of the Securities Industry and Financial Markets Association (**SIFMA**) in the response provided by SIFMA to the Proposed Rule, subject to the comments set out in this response.

As a final introductory matter, we wish to note our appreciation of the efforts made by the Agencies in the Proposed Rule to address certain comments raised previously in connection with the Original Proposed Rule. For example, we strongly support the increased flexibility provided for revolving securitisations of non-revolving assets under the seller's interest holding option and also for other investment and deposit arrangements in connection with the horizontal cash reserve account holding option. We consider that this flexibility should be maintained in the final rules.

Key issues overview

As a starting point, AFME supports the principles behind section 941(b) of the Dodd-Frank Act and the efforts of the Agencies to balance the corresponding considerations in the implementing measures set out in the Proposed Rule. Our members recognise that alignment of interests between sponsors and ABS investors has been identified as a key measure to ensure alignment of interests in the securitisation process and segments of the asset-backed markets in both the US and the EU. We fully support the ultimate aim of continuing to restore confidence in the securitisation markets.

That said, the Proposed Rule raises certain key issues for AFME members. In short, the issues identified relate to:

- *the need for a mutual recognition process* – we consider such a process to be essential to preserve cross-border market access and we urge the Agencies both to reconsider this issue and, to the extent that the Agencies believe that this is beyond their mandate, to refer the issue to those authorities empowered to progress the matter;

- *the need for clarifications and adjustments with respect to the proposed foreign transactions safe harbour* – we strongly support the inclusion of provisions intended to clarify the jurisdictional scope of the US regime, but request confirmation that secondary market trading activities are not relevant under the proceeds trigger condition, note the significant practical difficulties that will arise for transactions involving a US offering which seek to rely on the safe harbour as proposed and seek certain clarifications and adjustments to the safe harbour conditions;

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- *the need for development of certain holding options and exemptions* – we urge the Agencies to reconsider making provision for a representative sample holding option, note the need for certain technical clarifications to the seller's interest holding option to properly accommodate UK mortgage master trust structures and highlight the current lack of feasible holding options with respect to many ABCP conduit programmes and CLOs; and

- *the need for a level playing field for compliance* – we note that aspects of the proposals appear to assume that the US regime would apply in respect of US-originated transactions only and, as such, would not properly accommodate non-US transactions and/or would give rise to disproportionately onerous obligations for EU and other non-US market participants.

These issues are discussed in detail below. If these issues are not addressed, we consider that the interests of issuers and investors in both Europe and the US will be damaged, that cross-border liquidity will be restricted and, as a result, that the available funding options for real economy assets may be further limited.

Detailed comments

Mutual recognition (RfC 74)

AFME members strongly favour a mutual recognition process

We wish to reiterate that we strongly favour a mutual recognition process with respect to retention. As noted previously, we regard such a process as necessary to preserve the global nature of the ABS markets and to enhance global liquidity. As the International Organisation of Securities Commissions (**IOSCO**) noted in its final report on Global Developments in Securitisation Regulation published in November 2012, "*Cross border activity creates opportunities to broaden and deepen markets and amplify the economic benefits securitisation markets offer … the potential impact of differences in regulatory requirements across jurisdictions in impeding cross-border activity are issues of concern*".[3]

Mismatch in regimes results in limited compliance options and will restrict cross-border liquidity

The differences between the EU retention regime and the Proposed Rule are significant. These differences are expressly acknowledged by the Agencies in the Proposed Rule and are cited as the reason for the conclusion that "it likely would not be practicable to construct … a 'mutual recognition' system…". This essentially pushes the work required to make sense of the two regimes and, in particular, to identify a way to comply with both regimes, onto market participants. We urge the Agencies to reconsider this approach.

In general, in the absence of mutual recognition, in order to comply with both regimes (which will be necessary for cross-border market access), market participants would need to identify the common points between the two regimes and the more onerous compliance standard in each instance. Being limited to compliance via only those options and methods which work under both regimes rather than just one regime, market participants will effectively be unable to rely on large portions of each regime – unless two separate interests are retained, which will create significant inefficiencies in many transactions, including

[3] To view a copy of the report, please use the link below.
http://www.iosco.org/library/pubdocs/pdf/IOSCOPD394.pdf

from a regulatory capital relief perspective, increasing costs for issuers. In general, the portions of the regimes which will be unavailable will be those providing flexibility, for example, under the Proposed Rule, this would include certain provisions intended to provide a more flexible holding option for a particular type of transaction and/or to provide an exemption for certain qualifying assets.

The impact of this inability to rely on all aspects of each regime is expected to be most problematic for transactions less suited to a classic or "base case" retention holding model such as ABCP conduit programmes, managed CLOs and certain CMBS transactions. For example, while the Proposed Rule indicates that the retention requirement could be satisfied in the context of certain CMBS transactions through retention of a residual piece in a loan by a third-party "B-piece" buyer, this is unlikely to be acceptable under the EU regime given the proposed move under the coming Capital Requirements Regulation (which forms part of the so-called "CRD IV" framework) effectively to prohibit retention by an entity other than an originator, sponsor or original lender.

It should also be noted that the requirements under the EU regime may directly conflict with the Proposed Rule in certain (limited) scenarios. For example, whereas the Proposed Rule requires retention by one sponsor where a transaction involves multiple sponsor entities, the EU regime (based on proposals in connection with the coming CRD IV regime) would require proportionate retention by each sponsor. As a result, it will not be possible to comply with both regimes in the context of certain securitisation transactions involving multiple originators. Non-compliance will result in the shutting off of cross-border market access.

Mutual recognition should be reconsidered and the necessary work should be undertaken

Provision for mutual recognition between the US and the EU would fully address the issues outlined above. While the Proposed Rule indicates that the Agencies believe that the re-proposal incorporates sufficient flexibility for foreign sponsors seeking a significant US investor base to retain risk in a format that satisfies home country (i.e. European) and US requirements, we consider that this remains particularly difficult to achieve in practice in the context of certain transactions, including ABCP conduit programmes, managed CLOs and certain CMBS transactions.

It should also be noted that, given the number of technical differences between the regimes (including with respect to who can retain and how the relevant parties are defined, how the retained interest is to be measured, which hedging arrangements are restricted and how long the interest must be held for, etc.), which differences are expressly acknowledged by the Agencies in the Proposed Rule, the compliance analysis will not be straightforward even in the context of traditional structures which are suited to the more straightforward "base case" retention holding options.

Notwithstanding these differences, for the purposes of establishing a mutual recognition process, the EU regime demonstrates certain key minimum features consistent with a robust retention standard (which key features overlap with the US proposals) and achieves appropriate interest alignment between originators/sponsors and investors. In particular, the EU regime is entrenched in legislation, refers to retention by the originator or sponsor in general and provides for a minimum retention level of 5 percent and a hedging restriction. We consider that it is these key features which should be focused on when considering mutual recognition.

Provision for mutual recognition could be incorporated into the Proposed Rule for non-US transactions in various ways. In particular, we consider that this could be sensibly achieved through amendments to the

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proposed foreign transactions safe harbour condition that refers to the proceeds trigger (discussed further below) so that such condition refers to satisfaction of the specified proceeds trigger with respect to sales to US persons *or* confirmation of the commitment of the relevant non-US sponsor to retain a net economic interest in compliance with the EU retention regime. Our suggested approach would effectively carve out from the Proposed Rule: (i) foreign/EU transactions involving a US offering resulting in placement with US persons in an amount above the proceeds trigger threshold if the deal was compliant with the EU retention requirements; and (ii) foreign transactions not involving a US offering or involving a placement with US persons in an amount not exceeding the proceeds trigger threshold. We consider this to be an appropriate and sensible result.

It is acknowledged that a recognition process gives rise to certain potentially complex considerations and that work would be required to ensure that the adopted process operates as intended. We encourage the Agencies to reconsider the feasibility of mutual recognition and to undertake the necessary work (together with the EU authorities as appropriate, with whom we have also engaged) in keeping with calls from the G20 and IOSCO for coordination. In particular, we note that IOSCO has called on regulators to "*seek to minimise the potentially adverse effects of cross-border securitisation transactions resulting from differences in approaches to incentive alignment and risk retention*".[4] We consider that recent work undertaken by the US Commodity Futures Trading Commission (CFTC) and the SEC in adopting and proposing, respectively, substituted compliance frameworks in connection with certain regulatory requirements applicable to cross-border swaps demonstrates that meaningful coordination can be achieved.

Proposed safe harbour for certain foreign transactions (RfC 75(a) to (d))

AFME members strongly support the inclusion of a safe harbour for certain foreign transactions

Consistent with our response to the Original Proposed Rule, we strongly support the inclusion of a safe harbour which provides clarification on the intended scope of application of the requirements in respect of non-US transactions. In order to provide certainty in this regard, however, each condition under the safe harbour must be sufficiently clear and we consider that this is not the case under the Proposed Rule.

Interpretation of the proceeds trigger condition; essential clarification required that secondary market trading activities are not relevant

The Proposed Rule indicates that the safe harbour is intended to exclude from the scope of the US regime those transactions with "limited effect on US interests, underwriting standards, risk management practices or US investors". We strongly support this exclusion from scope in principle, although questions have been raised with respect to whether the proposed safe harbour clearly achieves this outcome.

In particular, questions have been raised with respect to whether the proposed safe harbour would provide relief for *any* foreign transactions, even those not involving a US offering, such as offshore transactions structured in compliance with Regulation S. These questions have been raised as a result of the new reference in the proceeds trigger condition (set out in _.20(b)(2)) to no more than 10 percent of the dollar value (or equivalent amount) of ABS interests in the securitisation transaction being "sold *or*

[4] See Recommendation 3 in the IOSCO final report on Global Developments in Securitisation Regulation published in November 2012. To view a copy of the report, please use the link below.

http://www.iosco.org/library/pubdocs/pdf/IOSCOPD394.pdf

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transferred to US persons" (emphasis added). It is our understanding that this reference to transfers should (sensibly) be interpreted to extend only to transfers by the issuing entity (thereby capturing, e.g., transfers by the issuing entity to US affiliates of non-US sponsors), rather than transfers which may occur after completion of the transaction through secondary market trading activities. However, confirmation of this is required to ensure that the safe harbour may be relied upon.

We consider that this interpretation is justified from a policy perspective. That is, if a wider interpretation was applied to draw in secondary market trading activities, then this would effectively remove any relief provided by the safe harbour as it would not be possible for market participants to establish with certainty at a relevant time that any transaction (including an offshore transaction structured in compliance with Regulation S) was outside scope, meaning that the safe harbour would not operate as intended or indeed at all. More generally, we note that it is not possible for issuers to monitor possible US person placement levels through secondary market trading.

We consider that our interpretation is also supported by the reference in the condition to the sale or transfer of "ABS interests *in the securitisation transaction*" (emphasis added). This is because "securitisation transaction" is defined to mean a transaction involving "the offer and sale of asset-backed securities by an issuing entity", thereby suggesting that the focus in the context of the proceeds trigger should also be on placement arrangements involving the issuing entity (whether directly or through an underwriter or initial purchaser), rather than transfers that occur after completion of the transaction through secondary market trading.

While we believe the interpretation of the proceeds trigger outlined above is the correct reading of the relevant provisions, we urge the Agencies to confirm that the relevant calculation need only take into account sales and transfers by the issuing entity and to clarify that such calculation is required to be undertaken only at the time of the initial issuance of the ABS interests. In the absence of this clarification, there is a risk that market participants may interpret the safe harbour conditions differently and/or consider that they are unable to rely on it in any scenario, resulting in confusion and a significant reduction in the effectiveness of the safe harbour provisions.

Satisfying the proceeds trigger condition; significant practical difficulties will arise for transactions involving a US offering

The questions raised in the Proposed Rule seek feedback on whether the proposed 10 percent proceeds trigger should be lower or higher. We note that these questions assume that a market participant will be able to confirm with sufficiently certainty the proportion of a new issue that will be placed with US investors at a relevant time. However, this is not the case in the context of the vast majority of transactions involving a US offering. Indeed, as a practical matter, it is not possible to forecast in advance, with any level of certainty, what the US investor proportion will be in a transaction (or indeed what the proportion will be in respect of any particular investor base).[5] AFME members have indicated that the relevant placement levels will not be known until the pricing of a transaction or possibly even later. This has always been the case, but is particularly true today given the increased volatility and smaller investor base that now exists for securitisation issues, post-crisis.

[5] Other than Regulation S transactions, where the proportion will be zero in the context of the primary distribution.

Based on the foregoing, we note that concerns have been raised that it will be extremely difficult (other than in certain limited circumstances, such as a reverse enquiry or other bespoke transaction context) for market participants in practice to rely on the safe harbour in the context of transactions involving an offering conducted in reliance on Rule 144A, Regulation D or Section 4(2) of the Securities Act of 1933 and, to be clear, this would be the case regardless of whether the proceeds trigger referred to 10 percent or a higher level. The importance of such offering regimes, which provide opportunities to European issuers to raise funds from US investors, should not be underestimated and Annex I to this response provides further information on access levels to USD liquidity by European issuers in the context of certain transactions (which we understand is closely correlated to US placement levels in general).

To the extent that the safe harbour is not available, it is our understanding that it will be necessary for European market participants to comply with the US risk retention rules – in addition to the European requirements (assuming that it is desirable to preserve flexibility for relevant EU regulated investors to participate in the transaction, which will be the usual position). However, as noted above, compliance with both regimes may not be feasible or may be extremely difficult to achieve on an efficient basis (particularly in the context of certain transactions which do not fit neatly into the "base case" retention template). For this reason, we have suggested above that the proceeds trigger should be revised to provide for mutual recognition – in particular, such that transactions involving a US offering resulting in placement with US persons above the trigger level could satisfy the condition if an interest was retained in the relevant transaction in compliance with the EU retention regime (see the discussion in the section above headed "*Mutual recognition should be reconsidered and the necessary work should be undertaken*"). We do not believe that any limit on US persons' investment in an ABS transaction should be a prerequisite of reliance on the safe harbour in circumstances where the EU retention regime has been complied with. We strongly encourage the Agencies to pursue our suggested way forward to preserve cross-border market access.

Appropriate proceeds trigger level; higher level should apply

Notwithstanding the practical difficulties noted above, assuming that a transaction could be structured to comply with the proceeds trigger condition (which is likely to be relevant in the context of certain limited arrangements only), we consider that a higher proceeds trigger should apply. In particular, applying the stated objective of the safe harbour (that is, to exclude those transactions with "limited effect" on US interests, underwriting standards, risk management practices or US investors), we consider that a more appropriate proceeds trigger level would be 20 percent.

Application of this higher level would be consistent with the goal of providing relief for transactions with a limited US investor connection only, as a relatively narrow US investor base would be permitted and, as a result, a considerable majority of the securities issued in the relevant transaction (that is, at least 80 percent) would be placed with non-US investors. Given that securities placed in the US under the safe harbour would be sold to sophisticated investors only (e.g. to "qualified institutional buyers" under Rule 144A), the need for rigid safeguards is reduced and a proceeds trigger level of 20 percent is more appropriate than the extremely low level contemplated by the Proposed Rule. Our suggested higher level would also result in a more consistent limitation under the safe harbour condition relating to the acquisition of the underlying assets and the condition relating to the proceeds trigger, which makes sense given the lack of a clear rationale for applying a more restrictive US investor connection.

It is our understanding that the current proposed 10 percent trigger level was selected in part because it is consistent with the level applied under US Securities Act Rules 801 and 802, being the exemptive rules

relating to cross-border offerings in the context of tender and exchange offers. However, it is not clear such exemptive rules provide a suitable comparison point for the purposes of setting the proceeds trigger level under the safe harbour. In this regard, we would note that, unlike the safe harbour provisions, such exemptive rules form part of a wider framework which provides for different "tiers" of exemptive relief in certain contexts (that is, alternative exemptions for tender offers may also apply where US security holders hold 40 percent or less of the relevant securities), meaning that any comparisons should be qualified as the consequences of not satisfying the 10 percent trigger under the two frameworks is very different.

Moreover, as the final rule[6] in respect of the exemptive rules indicates, the level applied thereunder was selected based in part on data showing that bidders for the securities of non-US companies commonly excluded US holders from tender offers in scenarios where the ownership percentage of US persons was 10 percent or less (and so a level of 10 percent was selected in part to encourage such bidders to include US holders, rather than exclude them). Accordingly, while a 10 percent level may make sense in the context of the exemptive rules, the same reasoning does not apply in the context of the risk retention safe harbour and we consider that the proposed 10 percent level should be reconsidered on this basis.

We encourage the Agencies to adopt our suggested higher trigger level for the reasons outlined above.

Other interpretation points

To minimise possible confusion with respect to the interpretation of the safe harbour, it would be helpful if confirmation was provided that each of the applicable conditions under the safe harbour are required to be tested as at the date of the initial issuance of the securities only (as opposed to on an ongoing basis). In keeping with our comments above, we note that any other approach under the safe harbour would effectively remove the ability of market participants to rely on the relief intended to be provided, as it would not be possible for such parties to confirm with certainty at the relevant time that the transaction was not subject to the risk retention requirements.

It would also be helpful if clarification was provided with respect to how the dollar value of the ABS interests should be determined for the purposes of the proceeds trigger condition. We note that the Original Proposed Rule referred to the "dollar value *by proceeds*" (emphasis added) which was clearer.

Lastly, we note that we support the amendments to the safe harbour conditions in the Proposed Rule intended to clarify that interests retained by the sponsor should be taken into account in the proceeds trigger in the amount of ABS interests sold in the securitisation transaction (i.e. in the denominator figure to be used in calculating the percentage of ABS interests sold in the securitisation transaction to US persons).

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6 http://www.sec.gov/rules/final/33-7759.htm#P183_25362

Comments on certain holding options

Seller's interest; need for technical amendments to accommodate other master trusts as intended (RfC 30)

AFME members welcome the extension of the availability of the seller's interest holding option to revolving securitisations of non-revolving assets. This increased flexibility addresses a previous mismatch between the EU regime and the Original Proposed Rule and is expected to assist UK originators in particular with being able to comply on an efficient basis with both the EU regime and the US regime in the context of UK mortgage master trusts. We strongly support the revisions made in the Proposed Rule in this regard and thank the Agencies for addressing our previously expressed concerns.

That said, it is not clear that all of the definitions and conditions proposed to apply in respect of eligible revolving master trusts under _.5 of the Proposed Rule would accommodate UK mortgage master trusts as intended. Given the statements of policy made in the Proposed Rule with respect to extension of the seller's interest holding option to UK mortgage master trusts, it is our understanding that any issues in this regard are technical only. Please see Annex II for an overview of a typical UK mortgage master trust structure.

The technical points identified under the Proposed Rule with respect to UK mortgage master trusts include the uncertainty as to whether the trust declared by the mortgages trustee would fall within the proposed definition of a "revolving master trust" as it is not clear that the beneficial interests created by the trustee would be asset-backed securities and/or that the mortgages trust would be an issuing entity as defined. In addition, it is not clear that the interest held by sellers in UK mortgage master trusts would satisfy the proposed seller's interest definition, given that the definition refers to such interest ranking *pari passu* with each series of investors' ABS interests issued by the issuing entity with respect to the allocation of all distributions and losses, whereas in certain circumstances in UK master trusts, distributions of principal receipts may be made to the funding entity in priority (in respect of time) to amounts paid to the seller. To be clear, at no time will the seller's interest in UK mortgage master trust transactions be prioritised over amounts paid to the funding entity.

We would be happy to work through the conditions with the Agencies to ensure that the provisions properly reflect and accommodate UK structures.

Representative sample; removal of option increases mismatch between EU and US regimes (RfC 31)

The Proposed Rule does not include a representative sample holding option. While the Agencies have indicated that such an option presents implementation challenges, we respectfully request that further consideration be given to the development of a representative sample option.

The European retention regime provides for a representative sample holding option. While the EU holding option is different in certain respects from the proposals included in the Original Proposed Rule (e.g. the EU option refers to a designated pool of at least 100 exposures, rather than 1,000 as under the Original Proposed Rule), it is not inconsistent *per se*. Accordingly, under the previous proposals, it was possible for the required interest to be retained through a representative sample under both the European and the US regimes (if the more onerous compliance standard was applied). The change in approach contemplated by the Proposed Rule removes this possible compliance option and, as such, increases the mismatch between the EU regime and the US proposals. As noted above, mismatches

between the two regimes effectively limit the compliance options available to market participants seeking to maintain cross-border liquidity in respect of transactions.

We note that the requirements relating to the representative sample holding option under the European regime are not highly prescriptive and instead a principles-based approach is taken. In particular, under the current requirements, retaining entities are required to consider "*both quantitative and qualitative factors when defining the pool of potentially securitised exposures from which the exposures retained and the exposures securitised are drawn, and consequently only truly "random" differences should exist or evolve between the retained and securitised exposures*". In addition, the factors applied are required to be disclosed to investors. It is the understanding of AFME members that these principles have operated thus far as intended by the EU authorities and we are not aware of concerns being raised with practices used to date.

The representative sample is an important holding option under the European regime and has been utilised in various transactions involving granular pools of primarily consumer assets. AFME members strongly encourage the Agencies to reconsider making provision for a representative sample holding option. The merits of pursuing this include avoiding further mismatch between the EU and US regimes, and the resulting cross-border market access benefits which accompany greater alignment.

Retention on an unfunded basis

In the context of discussing the feasibility of mutual recognition, the Proposed Rule notes that certain other risk retention frameworks recognise unfunded forms of risk retention and indicates that the Agencies do not believe that such unfunded forms provide sufficient alignment of interests and, as such, that these have been rejected as eligible forms of risk retention under the Proposed Rule.

As the Agencies will be aware, the European risk retention framework currently recognises unfunded forms of risk retention, including in the context of the vertical slice holding option (in the form of a liquidity facility, provided certain conditions are satisfied) and in the context of the first loss tranche holding option (in the form of a standby letter of credit and a guarantee, provided certain conditions are satisfied). In particular, this flexibility is considered to be essential to the ability of market participants to comply with the risk retention requirements in the context of ABCP conduit programmes, many of which (as pre-2011 arrangements) are outside the scope of the EU requirements until after the end of 2014.

In principle, AFME members do not consider that the contingent nature of these permitted forms means that they may not achieve appropriate interest alignment from a risk retention perspective. Economically, such forms represent net economic exposure to the securitisation and, as such, expose the provider to genuine credit risk, which we consider should be the key factor in assessing interest alignment.

It is our understanding that concerns have been raised with unfunded forms of risk retention on the basis that some sponsors may be more creditworthy than others, meaning that interests held in this way carry some risk that the sponsor may be unable, when called upon, to fulfil its obligations. We consider that these concerns confuse creditworthiness with interest alignment, and only the latter should be relevant from a risk retention perspective. That is, the purpose of risk retention is to help align the interests of sponsors with those of investors – not to provide investors with additional protection for their investments. As a bottom line, from an interest alignment perspective, we consider that a sponsor that provides a letter of credit or guarantee to an issuing entity is as much exposed to risk of loss as a sponsor that holds a funded interest.

We encourage the Agencies to reconsider their rejection of unfunded forms of risk retention and we support the general comments made in the SIFMA response in this regard. In particular, we encourage the Agencies to permit standby letters of credit, guarantees, liquidity facilities and similar support arrangements which commonly form part of ABCP conduit structures to be used to satisfy the retention requirement (discussed further in the section below). This flexibility would alleviate the issues identified below with respect to the lack of a feasible holding option for ABCP conduits and would reduce the current mismatch between the EU regime and the US proposals on this front, thereby improving the possibility of cross-border market access.

In the event that the Agencies are unable to provide for unfunded forms of risk retention due to concerns related to sponsor creditworthiness, we would ask the Agencies to consider permitting such forms for at least a sub-set of sponsors, such as regulated banks (ensuring that appropriate flexibility is provided for non-US banks, along the lines permitted under the definition of "regulated liquidity provider" in the Proposed Rule).

Originator-seller holding option; lack of a feasible option for ABCP conduits

While the retention holding option designed for ABCP conduits included in the Proposed Rule (the originator-seller option) is significantly more flexible than the version previously included in the Original Proposed Rule, the option remains subject to certain restrictive conditions that would limit its use in practice in the context of a large number of existing ABCP conduits which provide funding for EU originated assets.

For example, these conditions include a requirement that the conduit must have 100 percent liquidity coverage (without regard to the performance of the collateral and without regard to any credit enhancement) from a single regulated liquidity provider and restrictions on the types of assets that ABCP conduits are permitted to acquire (the Proposed Rule refers to only certain underlying ABS acquired from one or more intermediate SPVs) and on the tenor of qualifying ABCP (the Proposed Rule seeks to limit this to 270 days). In particular, AFME members have expressed concerns with the proposed restriction with respect to the type of assets permitted to collateralise ABCP conduits given that this provision does not reflect a sizable portion of existing arrangements.

We refer to and endorse the comments on the ABCP conduit holding option made in the SIFMA response, including those points referred to above and also the points made with respect to the need for grandfathering for legacy ABCP conduit assets and less burdensome monitoring and disclosure requirements for ABCP conduit sponsors.

To the extent that both the US and the EU regimes apply (which would not be unusual given the significant proportion of ABCP issued by European conduits funded in the US market), it is not clear that EU market participants would be able to comply in practice. Significantly, the flexibility provided under the EU regime in the context of ABCP programmes for the interest to be retained via programme-wide credit enhancement arrangements (such as via a standby letter of credit or other unfunded retention forms, discussed above) would not satisfy the US requirements as currently proposed, notwithstanding the alignment of interests between sponsors and investors arising from such arrangements. Use of the other base case holding options contemplated by the Proposed Rule which overlap with the holding options under the EU regime (such as the horizontal interest option or the vertical slice holding option) would be extremely difficult for ABCP conduits.

We note that the ABCP market in Europe and the US is an important source of low-cost short-term financing for operating businesses of all kinds, from industrial companies to finance and service companies, as well as providing a vital liquidity tool for bank sponsors. The issues highlighted above will impact on the practical ability of EU market participants to comply with the Proposed Rule and, to the extent they are unable to do so, effectively restrict access to the US market. In this regard, it should be noted that a significant proportion of the asset-backed commercial paper which provides funding for EU originated assets is funded in the US market. Industry estimates (based on calculations by Moody's Investors Service) indicate that approximately 60 percent of such commercial paper is placed in the US market.

We encourage the Agencies to permit standby letters of credit, guarantees, liquidity facilities and similar support arrangements which commonly form part of ABCP conduit structures to be used to satisfy the retention requirement.

Open market CLOs; lack of a feasible holding option

The retention holding option designed for open market CLOs included in the Proposed Rule (that is, the arranger option) raises a number of questions and is largely unworkable for transactions (whether originated in the US or the EU) given the restrictive conditions applied (including the requirement for the loan arranger to retain the loan tranche interest until the repayment, maturity, involuntary and unscheduled acceleration, payment default or bankruptcy default of the loan). In this regard, we refer to and endorse the comments made in SIFMA response, which cross-refers to the response from the Loan Syndications and Trading Association (LSTA).

The experience of managed CLOs under the European regime demonstrates that risk retention raises significant issues for these transactions. Unfortunately, these issues have not yet been fully resolved under the EU regime. While CLO issuance has revived in the US market, recovery on the same level has not yet occurred in the European market. There are a number of factors at play here, although the compliance challenges under the EU retention requirements for managed CLOs (which have been exacerbated by the legislative re-casting of the CRD regime) has certainly not assisted with the full return of this market.

We encourage the Agencies to use the flexibility provided under the legislative provisions to avoid the application issues which come with attempting to apply retention requirements to a structure which involves a separation between the origination of the underlying loan assets and the creation of the CLO, meaning that such structures are not an example of an originate-to-distribute model but are more akin from an interest alignment perspective to a managed fund than a securitisation. These issues could be sensibly avoided by making provision for an exemption for managed CLOs. Provision for an exemption for these transactions is recommended by IOSCO in its final report on Global Developments in Securitisation Regulation and this should be factored in. While the time for providing such an exemption has passed under the European regime, we consider that the Agencies remain in a position to come to the correct conclusion on this point.

In short, we continue to believe that managed CLOs are not the types of transactions that were meant to be subject to the risk retention requirements under section 941. We consider that any exemption provided in this regard should be available regardless of the jurisdiction of origination of the underlying loans and/or of the jurisdiction of regulation of the relevant collateral manager.

Need for an exemption for repackaging transactions

We reiterate our prior comments urging the Agencies to provide an exemption for untranched repackaging transactions of corporate debt securities. The rationale for regarding such transactions as securitisations under the Proposed Rule is not clear given that such transactions do not give rise to potential "originate-to-distribute" or related interest misalignment issues in the same manner as traditional securitisations. In a corporate debt repackaging transaction, the underlying security or securities are not created by the relevant corporate issuer(s) with a view to a later securitisation. We also support the comments made in the SIFMA response that repackagings are very similar to the single class pass-through resecuritisations for which an exemption is proposed to be provided under the Proposed Rule.

It should be noted that the application of the risk retention rules to untranched repackaging transactions gives rise to heightened issues for EU market participants. Such transactions would not be caught by the EU requirements because the securitisation definition used for such purposes turns largely on the presence of credit risk tranching in the relevant structure. Accordingly, the application of risk retention requirements in the context of such repackaging transactions is new to European market participants, and represents a further point of mismatch with the EU regime.

We encourage the Agencies to ensure that the retention requirements are applied in a manner which properly reflects the original legislative principles behind the requirements, that non-targeted transactions are not drawn in without clear justification and that similar principles are applied for exemptions between products and structures.

Level-playing field; disproportionate effect of certain requirements

In addition to the points noted above, certain specific requirements or provisions referred to in the Proposed Rule would present particular compliance challenges and/or operate in a disproportionately onerous or restrictive manner in the context of EU transactions. We consider that in principle a level playing field should apply with respect to market participants seeking to comply with the US regime.

Availability of the qualified residential mortgage and other qualified asset exemptions

Certain aspects of the qualified residential mortgage (QRM) and other qualified asset exemptions presume that the underlying assets or obligors are US only. For example, the QRM definition requires certain borrower verifications in accordance with US Federal Housing Administration standards, and other proposed qualified asset definitions refer to US specific security searches and/or credit reports.

While the domestic focus of the Proposed Rule is understandable, given that it will be necessary in the context of certain non-US transactions for the US requirements to be complied with, we consider that sufficient flexibility should be provided for a level playing field in general for all market participants. That is, in principle, it should be possible as a threshold matter for non-US transactions to also benefit from the qualified asset exemptions if they can satisfy the various substantive conditions and such transactions should not be automatically excluded on a technical basis due to a lack of flexibility for comparable non-US concepts.

We respectfully request that the Agencies provide sufficient flexibility within the QRM and other qualified asset exemptions to allow non-US originated transactions to benefit from these exemptions in principle. Where the relevant conditions refer to US concepts and processes, we consider that these should be amended to make it clear that, in the context of non-US transactions, substantially similar concepts and processes should apply instead.

Measurement of risk retention requirement based on fair value, determined under US GAAP (RfC 6)

The Proposed Rule would require sponsors, in the context of certain retention holding options (including the standard or "base case" option), to measure the retained interest using fair value, determined in accordance with US GAAP and to make certain disclosures of the sponsor's fair value methodology. Certain general concerns have been raised with respect to this aspect of the Proposed Rule and the significant difficulties raised by the proposed corresponding calculation and disclosure requirements and, in this regard, we support the comments made in the SIFMA response.

Further concerns have been raised with respect to the proposed requirement to use US GAAP from the perspective of European market participants. In particular, because European entities are unlikely to apply US GAAP as a matter of course in the context of their accounts and positions, the requirement to use US GAAP would be disproportionately onerous, giving rise to additional work and costs. It is not clear why measurement under US GAAP should be mandatory when non-US sponsors will use other recognised frameworks for their financial accounting. It is our understanding that such other frameworks are based on similar principles for fair value as US GAAP, meaning that arbitrage issues should not arise.

In the absence of appropriate flexibility being provided which takes into account non-US arrangements, European (and other non-US) market participants may struggle to comply with the proposed requirements, which may operate as an effective barrier to offerings in the US of European issues. Such a barrier would create an uneven playing field for European issuers and may result in disruption in the already fragile European ABS market.

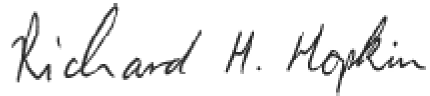
To the extent that the concept of fair value is retained in the final rules, we encourage the Agencies to provide flexibility for measurement of the retained interest using local GAAP or International Financial Reporting Standards (IFRS) for securitisation transactions where the sponsor (or other relevant retaining entity) is established outside the US.

Exemption for government-backed ABS

Lastly, we note that the exemption under the Proposed Rule for US government-backed ABS and the lack of provision for non-US government-backed ABS is very restrictive and will effectively restrict US investor access to such non-US ABS. This is out of step in part with the EU retention regime which includes a general exemption for transactions backed by "central government" claims without restriction. The rationale for the restrictive approach contemplated by the Proposed Rule is not clear given its intended focus on perceived failures in the ABS market arising as a result of the "originate-to-distribute" model, which model should not be relevant to any government-backed ABS.

In closing, we wish to emphasise that the engagement of Agencies with market participants on issues related to risk retention is appreciated and again we thank you where you have felt able to accommodate our previously expressed concerns. We are grateful for the opportunity to comment on the Proposed Rule and we would be happy to answer any further questions that you may have.

Yours faithfully,



Richard Hopkin, Managing Director
Association for Financial Markets in Europe

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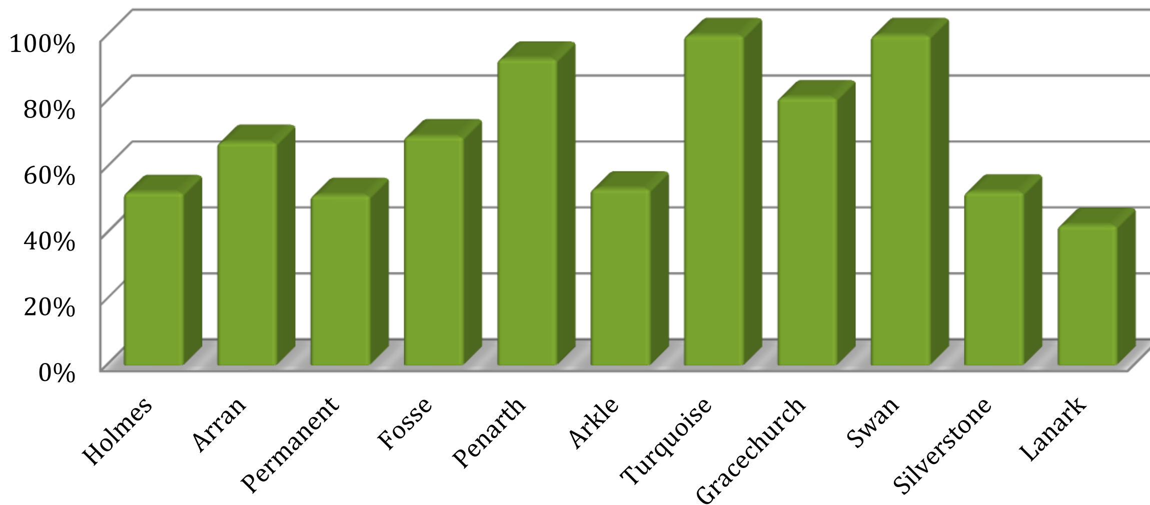
Annex I

TRANSACTIONS EVIDENCING THE IMPORTANCE OF ACCESS TO USD LIQUIDITY TO EUROPEAN ISSUERS

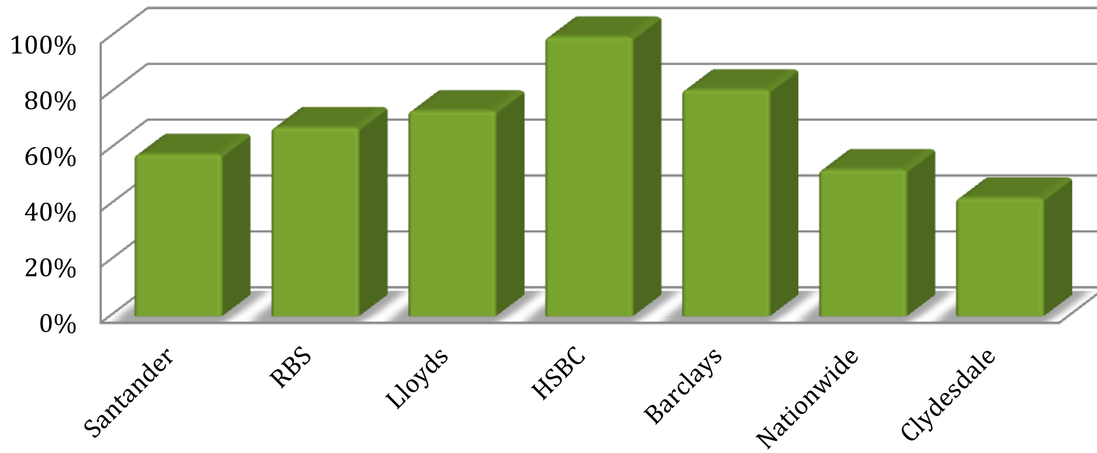
USD Denominated UK RMBS & Cards issuance since 2011						
Date	**Issuer**	**Seller**	**Collateral**	**AAA EUR mn**	**of which USD**	**% USD**
2-Feb-11	Holmes	Santander	RMBS	2,400	869	36%
6-Apr-11	Arran	RBS	RMBS	4,282	740	17%
14-Apr-11	Permanent	Lloyds	RMBS	4,136	1,795	43%
18-May-11	Fosse	Santander	RMBS	4,276	2,650	62%
2-Jun-11	Penarth	Lloyds	CARDS	659	518	79%
21-Jul-11	Arkle	Lloyds	RMBS	2,734	2,111	77%
15-Sep-11	Holmes	Santander	RMBS	2,730	2,342	86%
6-Oct-11	Turquoise	HSBC	CARDS	372	372	100%
7-Oct-11	Gracechurch	Barclays	CARDS	748	748	100%
10-Oct-11	Arran	RBS	RMBS	3,262	2,790	86%
13-Oct-11	Silverstone	Nationwide	RMBS	12,851	2,359	18%
26-Oct-11	Permanent	Lloyds	RMBS	3,557	2,121	60%
11-Nov-11	Gracechurch	Barclays	RMBS	2,767	2,110	76%
15-Nov-11	Penarth	Lloyds	CARDS	443	443	100%
29-Nov-11	Fosse	Santander	RMBS	1,302	1,202	92%
21-Dec-11	Swan	Lloyds	RMBS	383	383	100%
13-Jan-12	Arran	RBS	CARDS	947	947	100%
18-Jan-12	Holmes	Santander	RMBS	2,646	777	29%
3-Feb-12	Arkle	Lloyds	RMBS	4,733	1,406	30%
5-Mar-12	Gracechurch	Barclays	CARDS	340	340	100%
15-Mar-12	Silverstone	Nationwide	RMBS	1,805	1,565	87%
04-Apr-12	Penarth	Lloyds	CARDS	571	571	100%
12-Apr-12	Holmes	Santander	RMBS	949	949	100%
16-May-12	Fosse	Santander	RMBS	2,558	1,373	54%
18-May-12	Gracechurch	Barclays	CARDS	469	469	100%

USD Denominated UK RMBS & Cards issuance since 2011						
Date	**Issuer**	**Seller**	**Collateral**	**AAA EUR mn**	**of which USD**	**% USD**
30-May-12	Holmes	Santander	RMBS	645	113	18%
7-Jun-12	Gracechurch	Barclays	CARDS	577	577	100%
14-Jun-12	Gracechurch	Barclays	RMBS	3,807	397	10%
22-Jun-12	Turquoise	HSBC	CARDS	597	597	100%
20-Jul-12	Lanark	Clydesdale	RMBS	1,333	658	49%
23-May-13	Holmes	Santander	RMBS	1,284	580	45%
06-Jun-13	Lanark	Clydesdale	RMBS	639	226	35%

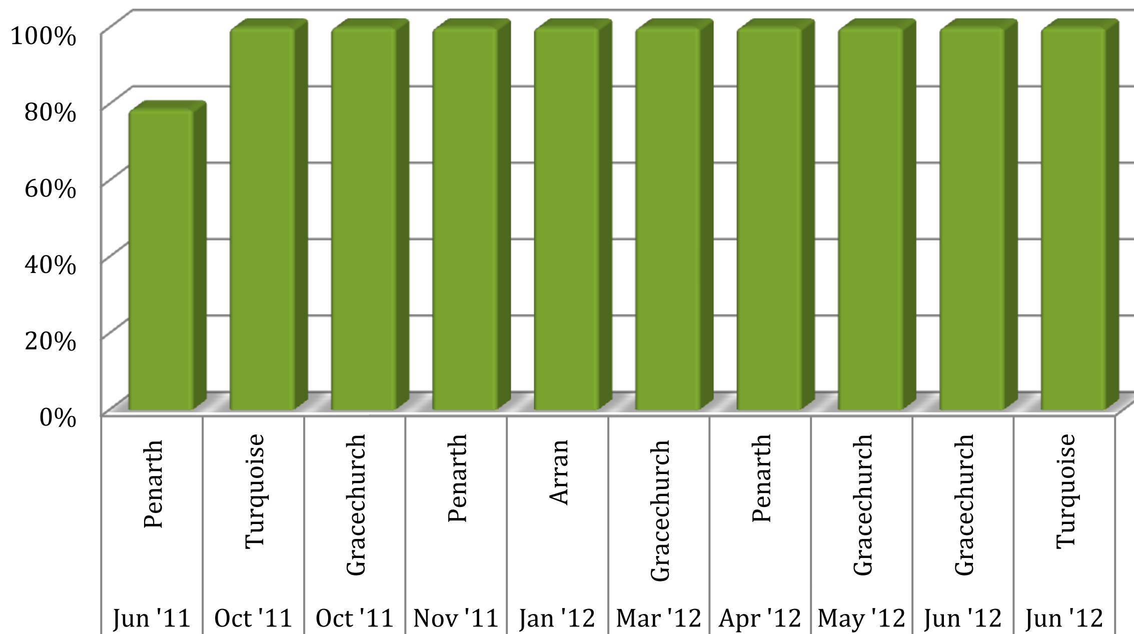
Source: Deutsche Bank



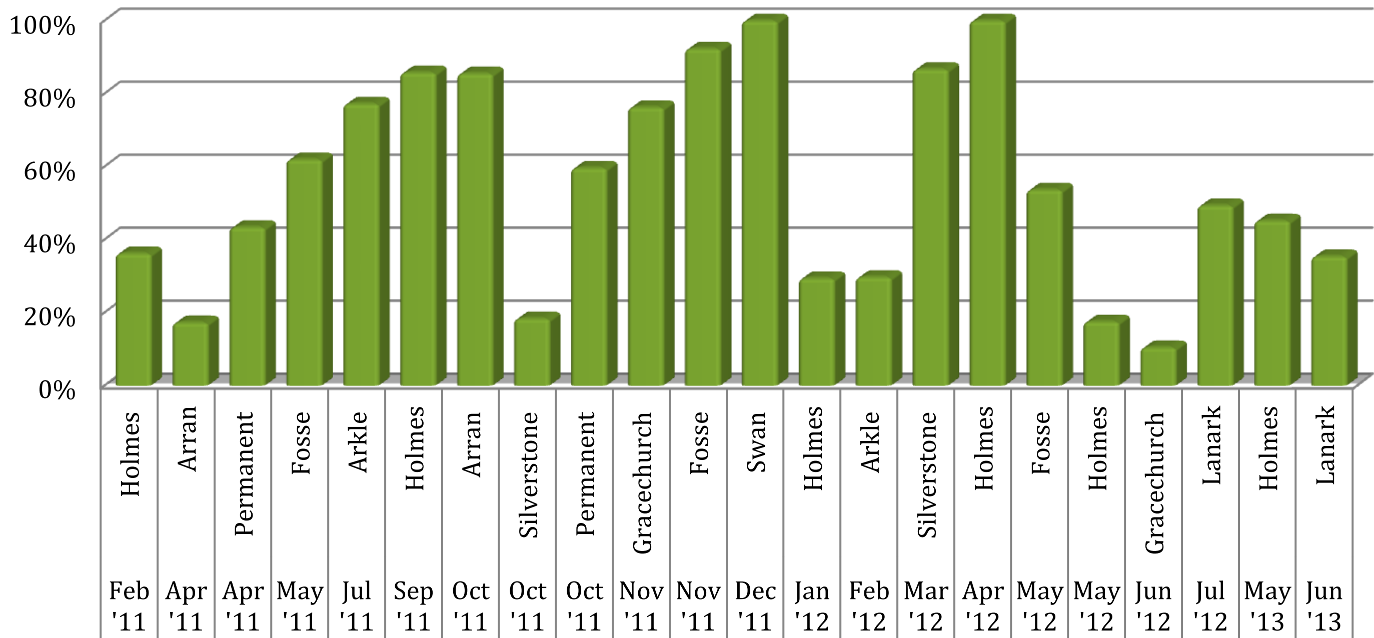
% including USD - by bank/sponsor



% including USD - Credit Cards



% including USD - RMBS



Source: Deutsche Bank

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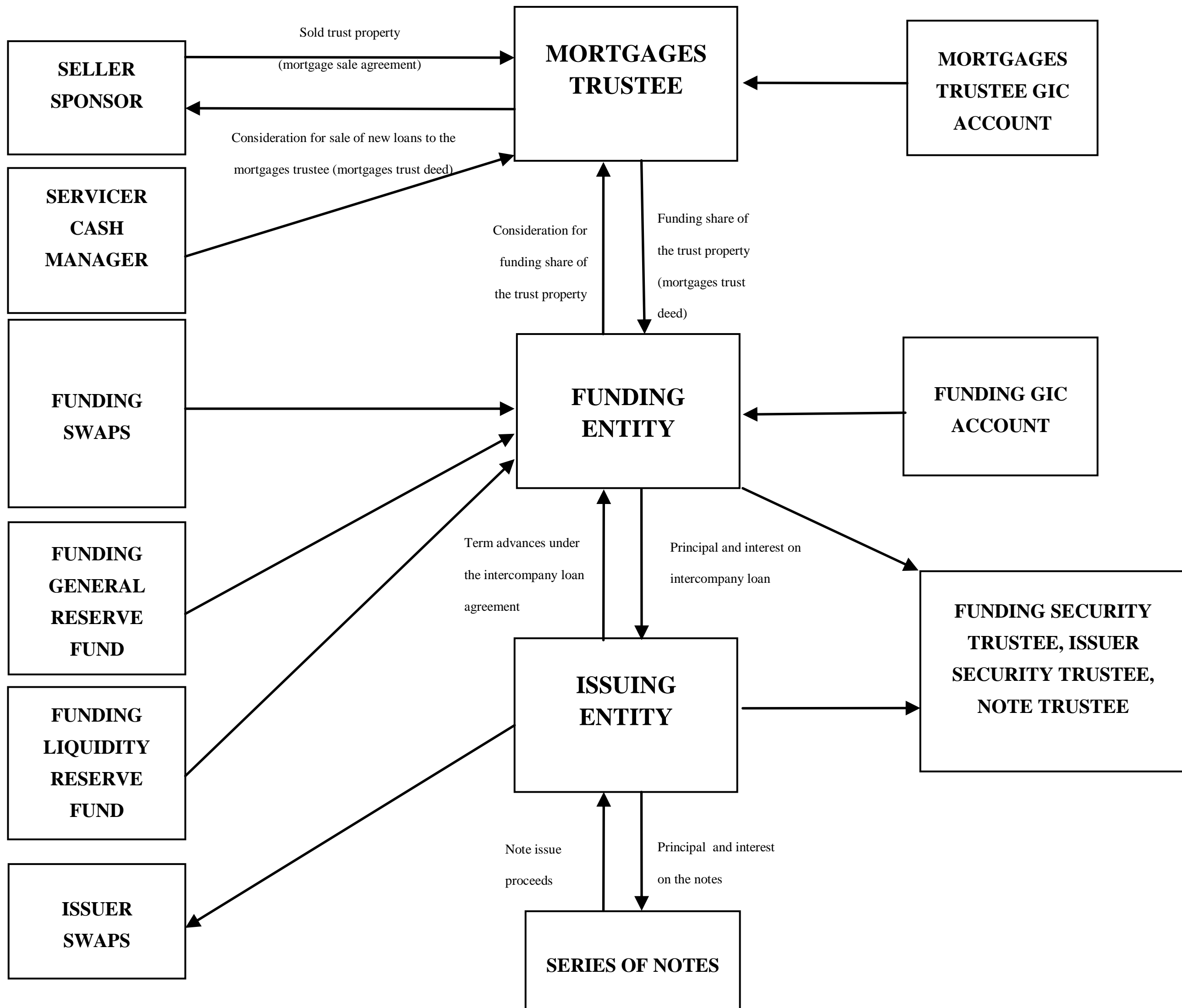
Annex II

UK MORTGAGE MASTER TRUST – BASIC STRUCTURE DIAGRAM



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Summary of basic features of transaction structure

(1) The seller will sell residential mortgage loans and their related security to the mortgages trustee. From time to time the seller may, subject to satisfaction of certain conditions, sell further loans and their related security to the mortgages trustee.

(2) The mortgages trustee holds the loans and other property on trust for the benefit of the seller and funding pursuant to a mortgages trust deed. Each of the seller and funding has a joint and undivided interest in the trust property, but its entitlement to the proceeds from such property is in proportion to its respective share.

(3) The cash manager distributes receipts and allocates losses on the loans to funding and the seller based on their (fluctuating) percentage share in the trust property. The issuing entity will make term advances available to funding pursuant to the intercompany loan agreement from the proceeds of each series of notes. The mortgages trustee allocates principal receipts on the loans between funding and the seller in amounts depending on whether funding is required to pay amounts on the intercompany loan on the next funding payment date or is accumulating cash to repay a bullet term advance or a scheduled amortisation instalment or equivalent, as the case may be.

(4) Funding will use the proceeds of term advances received from the issuing entity under the intercompany loan to either: (a) make an initial contribution to the mortgages trustee to acquire a share of the trust property (the mortgages trustee will use the proceeds of the initial contribution to pay the seller part of the consideration for loans (together with their related security) sold to the mortgages trustee in connection with the issuance of notes by the issuing entity and the making of the relevant term advance to funding, which will result in a corresponding increase in funding's share of the trust property) or make a further contribution to the mortgages trustee to acquire part of a further funding company's share and/or the seller's share of the trust property; (b) fund or replenish a reserve fund; and/or (c) repay one or more of the existing term advances then outstanding.

(5) Funding will use a portion of the amounts received from its share in the trust property to meet its obligations to pay interest, principal and certain fees due to the issuing entity under the intercompany loan agreement and to replenish any relevant reserve funds as well as pay certain fees and expenses. Funding's obligations to the issuing entity under the intercompany loan agreement will be secured under the funding deed of charge by, among other things, funding's share of the trust property.

(6) The issuing entity's obligations to pay principal and interest on the notes will be funded primarily from the payments of principal and interest received by it from funding under the intercompany loan agreement. The issuing entity's primary asset will be its rights under the intercompany loan agreement. Neither the issuing entity, the note trustee, the issuer security trustee nor the noteholders will have any direct interest in the trust property, although the issuing entity will have a shared security interest under the funding deed of charge in funding's share of the trust property.

(7) Subject to satisfying certain issuance tests, the issuing entity will issue notes in separate series and classes (or sub-classes) from time to time. The issuing entity may issue notes of any class on any date provided there is sufficient credit enhancement on that date, either in the form of lower-ranking classes of notes or other forms of credit enhancement. The issuing entity's obligations under, among other things, the notes will be secured under the issuer deed of charge entered into with, among others, the issuer security trustee, by, among other things, the issuing entity's rights under the intercompany loan agreement.