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February 26, 2014

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219
Docket No. OCC-2013-0010

Mr. Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitutional Avenue, NW
Washington, DC 20551
Docket No. R-1411

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AD74

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
File Number S7-14-11

Mr. Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA43
Federal Housing Finance Agency
Constitution Center
(OGC) Eighth Floor
400 7th Street, SW
Washington, DC 20024

Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500
RIN 2501-AD53

Re: Credit Risk Retention

Ladies and Gentlemen:

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to comment on the re-proposed rules ("Proposed Rules") jointly issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the Federal Housing Finance Agency

[1] Fidelity is one of the world's largest providers of financial services, with assets under administration of $4.5 trillion, including managed assets of $1.9 trillion. Fidelity provides investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 5,000 financial intermediary firms.

and the Department of Housing and Urban Development (together, the "Agencies") to implement the credit risk retention requirements of Section 15G of the Securities Exchange Act of 1934 ("Exchange Act").[2]

Fidelity recognizes the significant work undertaken by the Agencies in preparing the Proposed Rules with the goal of better aligning the interests of securitizers of asset-backed securities ("ABS") with those of investors in ABS. However, as discussed in greater detail in the remainder of this letter, Fidelity is concerned that the Proposed Rules may impair the viability of the portion of the ABS market collateralized by commercial real estate loans ("CMBS"). In addition, Fidelity is supportive of the comments and suggestions submitted to the Agencies by the Investment Company Institute on October 30, 2013.[3] We write separately to highlight certain additional points relating to the CMBS market from the point of an investor.

In the proposal originally issued by the Agencies in 2011, a sponsor of CMBS could satisfy its risk retention requirements by transferring, in the same form and amount, and subject to the same restrictions, the risk that the sponsor retained in the transaction, or the 'retained interest', to a single third-party purchaser. The original 2011 proposal also provided that certain loans meeting the underwriting standards for "qualifying commercial real estate loans" ("QCRE" loans) would be exempt from the risk retention requirements entirely.[4] While we appreciate the Agencies' willingness to ease the transfer restrictions in the Proposed Rules, we believe the Agencies should have gone even further. The new proposed restrictions, coupled with the overly restrictive QCRE criteria, will severely impact the viability of the CMBS market.[5]

To reduce the impact on the CMBS market while preserving the Agencies' stated goal of promoting high quality underwriting,[6] we recommend that the Agencies incorporate the following concepts, which we discuss further below:

- Eliminate all transfer restrictions on the retained interests after five years from the closing of the transaction.
- Modify the underwriting standards for QCRE loans to capture a greater percentage of the loan market while maintaining high credit quality.
- Exempt single asset/single borrower loans from the risk retention requirement.

[2] *Credit Risk Retention*, 78 Fed. Reg. 57928 (Sept. 20, 2013) ("Release"). Section 15G was added to the Exchange Act by Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; Pub. L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank Act").

[3] Letter to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, et al., from Karrie McMillan, General Counsel, Investment Company Institute, dated October 30, 2013.

[4] *Credit Risk Retention*, 76 Fed. Reg. 24090 (Apr. 29, 2011).

[5] The Proposed Rules loosened the transfer restrictions by permitting, after an initial five year period has lapsed, subsequent transfers to up to two third-party purchases. In the original 2011 proposal, the sponsor or initial third party purchaser was restricted from transferring for the duration of the underlying assets.

[6] Release, supra note 2, at 57958.

A. Eliminate Transfer Restrictions after five years

The Proposed Rules allow a sponsor to transfer the retained interest to an initial third-party purchaser at the time the transaction closes, provided that the initial third-party purchaser meets certain eligibility requirements.[7] The initial third-party purchaser (or the sponsor, if no transfer occurred at the time of closing) may transfer the retained interest to *no more than two* subsequent third-party purchasers at any time commencing five years after the closing of the transaction. The subsequent transferees must satisfy all of the requirements applicable to initial third-party purchasers.[8]

Although less restrictive than the original proposal, we believe the transfer restrictions as currently proposed should be modified further to maintain a viable CMBS market, including the "B-piece" structure[9], while promoting healthy underwriting standards through meaningful risk retention. In particular, Fidelity recommends that the Agencies allow the transfer restrictions on the retained interest to expire five years after the closing, rather than limiting transfers of the retained interest to no more than two subsequent third-party purchasers after such five-year period.

Restricting transfers of the retained interest (i.e., the B-piece) to two subsequent third-party purchasers five years after the closing will severely impact the liquidity of the B-piece and, therefore, disrupt the CMBS market. A decrease in the liquidity of the B-piece will result in significantly fewer B-piece buyers willing to hold such an illiquid asset and those B-piece buyers that choose to participate will demand a higher return. The higher return demanded by the B-piece buyer will increase the overall cost of the CMBS transaction, making it a less desirable financing option for the underlying borrowers. As applied to Fidelity, under the Proposed Rules, higher borrowing costs will result in fewer CMBS transactions available in the market and limit the ability of the Fidelity mutual funds' underlying shareholders to access the commercial real estate market through this type of structure.

The five-year transfer restriction period accomplishes the Agencies' goal of promoting high quality underwriting.[10] We believe that additional restrictions above and beyond the five-year period fail to further the Agencies' purpose. Limiting the duration of the transfer restrictions on the retained interest to five years still results in meaningful risk retention by the initial third-party purchaser (or the sponsor, if no transfer occurred at the time of closing) because such period is sufficiently long enough for the losses from poor underwriting methods to manifest. Historically, the occurrence of defaults as a percentage of original balances in

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[7] Proposed Rule §_.7(b)(1) and §_.7(b)(8)(ii)(C).

[8] Proposed Rule §_.7.

[9] In the current CMBS market, it is common for buyers of the non-investment grade portions of the CMBS transaction, commonly referred to as the "B-piece", to target and specifically negotiate for different classes within the B-piece (i.e., BBB, BB and B).

[10] Release, supra note 2, at 57958.

commercial mortgages rises over the first three years after origination, plateaus for the following 4 years, and then falls dramatically over the remaining life of the loan. Accordingly, at the end of five years, the default trend of the commercial mortgages underlying the CMBS transaction will have been established. Further, the default trend after five years will dictate the sale price of the retained interest and, thus, the impact of poor underwriting standards would be realized by the initial third-party purchaser (or the sponsor, if no transfer occurred at the time of closing). As a result, an initial third-party purchaser (or the sponsor, if no transfer occurred at the time of closing) will be incentivized to demand quality underwriting at the securitization stage in an effort to mitigate the risk of any such loss during the risk retention period. We believe, therefore, that allowing the retained interest to be transferred after five years free of restrictions will support a functioning CMBS market while preserving the Agencies' goal of instituting a meaningful risk retention measure without artificially limiting an investor's opportunities.

B. Qualifying Commercial Real Estate Loans

Both the original 2011 proposal and the Proposed Rules provide that certain loans meeting the underwriting standards for QCRE loans will be subject to a zero percent risk retention requirement.[11] This is similar in principle to the exemption for qualified residential mortgages ("QRMs"). Under the Proposed Rules, the Agencies broadened and simplified the scope of the QRM exemption by aligning the definition of "qualified residential mortgage" with that of "qualified mortgage" as recently adopted by the Consumer Financial Protection Bureau.[12] The Agencies did not, however, grant similar relief for commercial mortgages. The underwriting standards for QCRE loans remain, for the most part, unchanged from the original 2011 proposal.[13] We believe that, under the Proposed Rules, the underwriting standards for QCRE loans would capture approximately only 4% of the CMBS market, while the expanded underwriting standards for QRMs would capture approximately 65% of the residential mortgage-backed securities market.

If only 4% of the current CMBS loans qualify as a QCRE loan under the Proposed Rules, we believe the unintended consequence of such exclusive criteria will be the deterioration of the overall quality of the CMBS market. If a vast majority of CMBS loans cannot qualify for zero risk retention, CMBS deals will become much more costly. These increased deal costs will trickle down to borrowers who will be charged increased borrowing rates. This, in turn, will drive borrowers to more affordable lending sources that will not securitize their loans and are therefore not subject to risk retention requirements. Inevitably, premium commercial property owners with higher quality properties will finance away from CMBS lenders, leaving the less desirable collateral for the CMBS market. Fidelity and its investors rely on CMBS as a means to

[11] Release, supra note 2, at 57979.

[12] Proposed Rule §_.13. By aligning the QRM definition with the QM definition, the Agencies have simplified and expanded the QRM exemption by no longer requiring an LTV ratio or standards related to a borrower's credit history or a written appraisal requirement and servicing standards.

[13] The only changes were minor adjustments to the debt service coverage ratios for multifamily properties, leased QCRE loans and other QCRE loans.

access commercial real estate lending, an asset class to which individuals and smaller institutional investors may not otherwise have access. Without modifying the proposed QCRE criteria, we are concerned that the end result for our investors will be limited access to a weakened CMBS asset class.

We believe that the criteria for a QCRE loan could be expanded without significantly increasing the risk of loss. We urge the Agencies to expand these criteria to include the following loan features ("Suggested Criteria"):

	Non-Hospitality Loans	Hospitality Loans[14]
Term	No minimum	No minimum
Amortization	Up to 30 years	Up to 25 years
Minimum Debt-Service Coverage Ratio	1.25x	1.50x
Beginning Loan-to-Value ("LTV")	≤ 70% (interest-only loans w/ ≤ 55% LTV qualify)	≤ 70% (interest-only loans w/ ≤ 55% LTV qualify)

Appendix A includes data comparing the impact the proposed QCRE criteria would have on the universe of loans that have constituted the CMBS market over the past 16 years versus our Suggested Criteria.[15] As illustrated in Appendix A, applying the Suggested Criteria would, in comparison to the current QCRE criteria, capture significantly more loans in the CMBS market while only slightly increasing the cumulative loss percentage. For the period from 1997 through October, 2013, the QCRE criteria in the Proposed Rules would capture approximately 4% of the historical loans, while the Suggested Criteria would capture approximately 28% of the loans. Further, the cumulative loss over this period under the currently-proposed QCRE criteria would be 74 basis points of loss, while the Suggested Criteria would have resulted in loan losses of 108 basis points.

Fidelity believes that this difference in the degree of loss is immaterial to the overall CMBS transaction. The B-piece normally comprises the bottom 700 basis points of the face value of a CMBS transaction. Therefore, under the Suggested Criteria, the B-piece would provide loss coverage of 6.5 times (700 basis points of face value divided by 108 basis points of loan losses) to the lowest-rated investment grade tranches (BBB rated tranches). Further, in any CMBS transaction, the size of the B-piece of approximately 700 basis points of face value provides a sufficiently large first-loss position ahead of the investment grade tranches. Accordingly, we urge the Agencies to adopt our Suggested Criteria for defining a QCRE loan

[14] The cash flows of hospitality loans (e.g., hotels) tend to be more volatile because of the short-term nature of hotel property leases. Accordingly, our proposed Suggested Criteria for hospitality loans takes into consideration this trend.

[15] The data in Appendix A was obtained from Trepp, LLC, a provider of information, analytics and technology to the global CMBS, commercial real estate, and banking industries. Fidelity has not independently verified the accuracy of the data included in Appendix A.

because doing so would, as compared to the Agencies' current proposed criteria, dramatically increases the universe of QCRE-eligible loans while only slightly increasing the cumulative losses resulting from such loans.

C. Exempt Single Asset/Single Borrower Loans from the Risk Retention Requirements

Section 15G of the Exchange Act states that the risk retention rules adopted by the Agencies shall provide for "a total or partial exemption of any securitization, as may be appropriate in the public interest and for the protection of investors."[16] Consistent with this authority, we urge the Agencies to exempt from the risk retention requirements sponsors of CMBS that are backed solely by single asset or single borrower ("SASB") loans. SASB loans represent a unique subset of the CMBS market. Compared to conduit transactions that average 100 or more loans in a CMBS pool, SASBs consist of a loan reflecting a single commercial asset or single commercial borrower and are generally considered less complex, more transparent, and of higher credit quality, as evidenced by the fact that most SASB trusts issue only investment grade bonds.

As drafted, the Proposed Rules would require, in most cases, the risk retention party to retain five percent of the investment grade bonds as a retained interest. Retaining the investment grade bonds increases the overall cost of the structuring of an SASB transaction, and decreases the competiveness of these trusts in the marketplace, without a commensurate increase in investor protection. Additionally, the retained investment grade bonds would limit many investors' ability to participate in the transaction due to the limit on the number of third-party purchasers allowed to purchase the retained interest as well as the inability of many investment grade investors to hold bonds that have trading limitations. For these reasons, we believe it is unnecessary to impose a risk retention requirement on sponsors of SASB trusts.

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We appreciate the opportunity to comment on the Proposed Rules. Fidelity would be pleased to provide further information or respond to any questions that the Agencies may have.

Sincerely,

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[16] Section 15G(c)(1)(G)(i) of the Exchange Act.

EXHIBIT A

Proposed Rule for QCRE Loans

Criteria

DSCR: 1.25x for Multifamily
1.70x for Hospitality
1.50x for all other property types

Amortization: 30 years for Mulifamily
25 years for all other property types

LTV: 65% for all property types
No interest only loans

Trepp CMBS Conduit Universe

							All				Qualified			
Vinatge	Total Loans Securitized	Total Securitized Balance	Total Loans that meet Criteria	% By Loan Count	Total Balance that meets Criteria	% By Balance	Total Securitized Balance of Defaulted Loans [1]	Defaulted % of Securitized Balance	Total Loss	Loss % of Securitized Balance	Total Securitized Balance of Defaulted Loans [1]	Defaulted % of Securitized Balance	Total Loss	Loss % of Securitized Balance
1997	2,996	17,109,211,368	293	9.78%	1,109,357,933	6.48%	2,522,504,977	14.74%	565,545,998	3.31%	147,318,677	13.28%	21,928,085	1.98%
1998	8,435	46,206,359,955	880	10.43%	3,961,926,191	8.57%	4,896,008,145	10.60%	1,235,322,981	2.67%	152,952,107	3.86%	37,008,821	0.93%
1999	6,898	35,253,064,849	678	9.83%	2,609,046,966	7.40%	4,933,655,004	13.99%	1,114,021,272	3.16%	106,135,350	4.07%	17,015,561	0.65%
2000	3,865	22,241,634,274	401	10.38%	1,608,700,981	7.23%	4,160,180,740	18.70%	1,021,550,677	4.59%	107,085,633	6.66%	15,402,380	0.96%
2001	4,326	30,478,177,066	435	10.06%	2,037,174,211	6.68%	5,705,600,954	18.72%	1,352,776,368	4.44%	116,187,944	5.70%	25,702,275	1.26%
2002	4,100	33,091,693,298	443	10.80%	2,347,035,811	7.09%	4,581,375,638	13.84%	1,003,954,484	3.03%	114,795,023	4.89%	6,567,663	0.28%
2003	5,885	55,843,173,315	751	12.76%	3,703,460,954	6.63%	6,335,107,926	11.34%	939,448,184	1.68%	165,224,202	4.46%	27,665,123	0.75%
2004	6,694	79,389,101,101	564	8.43%	2,938,183,491	3.70%	9,483,808,177	11.95%	1,508,610,940	1.90%	82,167,203	2.80%	18,005,523	0.61%
2005	10,695	143,562,326,568	796	7.44%	4,321,088,482	3.01%	23,820,749,182	16.59%	4,019,031,941	2.80%	174,390,700	4.04%	57,288,855	1.33%
2006	11,921	162,824,533,258	525	4.40%	2,838,353,605	1.74%	33,475,622,956	20.56%	6,259,882,627	3.84%	78,216,664	2.76%	14,757,286	0.52%
2007	11,876	191,791,869,757	267	2.25%	1,449,046,164	0.76%	50,974,521,156	26.58%	6,269,466,456	3.27%	66,573,184	4.59%	6,959,651	0.48%
2008	819	10,707,465,072	13	1.59%	45,033,361	0.42%	2,313,358,236	21.61%	572,372,282	5.35%	5,356,623	11.89%	-	0.00%
2009	0	0	0	0.00%	0	0.00%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
2010	219	5,384,767,165	14	6.39%	567,113,511	10.53%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
2011	980	24,747,173,352	40	4.08%	302,502,681	1.22%	28,707,602	0.12%	-	0.00%	-	0.00%	-	0.00%
2012	1,735	32,164,603,817	153	8.82%	1,682,818,203	5.23%	2,435,549	0.01%	-	0.00%	-	0.00%	-	0.00%
2013	2,041	37,633,927,633	187	9.16%	2,044,021,128	5.43%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
Grand Total	**83,485**	**928,429,081,848**	**6,440**	**7.71%**	**33,564,863,674**	**3.62%**	**153,233,636,243**	**16.50%**	**25,861,984,209**	**2.79%**	**1,316,403,310**	**3.92%**	**248,301,223**	**0.74%**

1) Default is defined as any loan that experienced a delinquency of 90+ days.

Fidelity Suggested QCRE Loans

Criteria

DSCR: 1.50x for Hospitality
1.25x for all other property types

Amortization: 30 years for all property types

LTV: 70% for all property types
Interest Only loans with LTV of 55% or less

Trepp CMBS Conduit Universe

							All				Qualified			
Vinatge	Total Loans Securitized	Total Securitized Balance	Total Loans that meet Criteria	% By Loan Count	Total Balance that meets Criteria	% By Balance	Total Securitized Balance of Defaulted Loans [1]	Defaulted % of Securitized Balance	Total Loss	Loss % of Securitized Balance	Total Securitized Balance of Defaulted Loans [1]	Defaulted % of Securitized Balance	Total Loss	Loss % of Securitized Balance
1997	2,996	17,109,211,368	1,138	37.98%	5,506,048,621	32.18%	2,522,504,977	14.74%	565,545,998	3.31%	709,328,465	12.88%	93,048,163	1.69%
1998	8,435	46,206,359,955	2,824	33.48%	15,306,929,834	33.13%	4,896,008,145	10.60%	1,235,322,981	2.67%	976,670,835	6.38%	215,411,675	1.41%
1999	6,898	35,253,064,849	2,528	36.65%	11,869,536,607	33.67%	4,933,655,004	13.99%	1,114,021,272	3.16%	1,051,654,411	8.86%	213,791,086	1.80%
2000	3,865	22,241,634,274	1,594	41.24%	8,649,881,149	38.89%	4,160,180,740	18.70%	1,021,550,677	4.59%	1,133,910,804	13.11%	256,795,229	2.97%
2001	4,326	30,478,177,066	1,663	38.44%	11,723,783,557	38.47%	5,705,600,954	18.72%	1,352,776,368	4.44%	1,326,157,149	11.31%	270,785,784	2.31%
2002	4,100	33,091,693,298	1,477	36.02%	12,749,701,259	38.53%	4,581,375,638	13.84%	1,003,954,484	3.03%	1,275,258,236	10.00%	312,004,412	2.45%
2003	5,885	55,843,173,315	2,265	38.49%	23,570,140,879	42.21%	6,335,107,926	11.34%	939,448,184	1.68%	1,906,065,978	8.09%	164,450,057	0.70%
2004	6,694	79,389,101,101	2,244	33.52%	26,919,333,828	33.91%	9,483,808,177	11.95%	1,508,610,940	1.90%	2,288,881,345	8.50%	201,171,589	0.75%
2005	10,695	143,562,326,568	2,931	27.41%	35,415,056,538	24.67%	23,820,749,182	16.59%	4,019,031,941	2.80%	2,759,082,166	7.79%	487,389,724	1.38%
2006	11,921	162,824,533,258	2,516	21.11%	27,280,286,125	16.75%	33,475,622,956	20.56%	6,259,882,627	3.84%	2,264,171,544	8.30%	318,862,986	1.17%
2007	11,876	191,791,869,757	1,849	15.57%	23,103,738,356	12.05%	50,974,521,156	26.58%	6,269,466,456	3.27%	2,052,668,256	8.88%	236,753,253	1.02%
2008	819	10,707,465,072	127	15.51%	1,505,186,544	14.06%	2,313,358,236	21.61%	572,372,282	5.35%	306,566,924	20.37%	23,144,231	1.54%
2009	0	0	0	0.00%	0	0.00%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
2010	219	5,384,767,165	167	76.26%	4,239,928,286	78.74%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
2011	980	24,747,173,352	634	64.69%	16,115,264,949	65.12%	28,707,602	0.12%	-	0.00%	15,399,929	0.10%	-	0.00%
2012	1,735	32,164,603,817	1,037	59.77%	16,727,385,192	52.01%	2,435,549	0.01%	-	0.00%	-	0.00%	-	0.00%
2013	2,041	37,633,927,633	1,112	54.48%	17,725,681,428	47.10%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
Grand Total	**83,485**	**928,429,081,848**	**26,106**	**31.27%**	**258,407,883,154**	**27.83%**	**153,233,636,243**	**16.50%**	**25,861,984,209**	**2.79%**	**18,065,816,043**	**6.99%**	**2,793,608,190**	**1.08%**

1) Default is defined as any loan that experienced a delinquency of 90+ days.