

July 19, 2004



Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the  
Federal Reserve System  
20th Street and Constitution Ave., N.W.  
Washington, D.C. 20551  
Docket No. OP-1189

Robert E. Feldman  
Executive Secretary  
Attn: Comments  
Federal Deposit Insurance  
Corporation  
550 17th Street, NW  
Washington, DC 20429

360 MADISON AVENUE  
NEW YORK, NY 10017  
TELEPHONE 646.637.9200  
FAX 646.637.9132  
[www.americansecuritization.com](http://www.americansecuritization.com)

Office of the Comptroller of the  
Currency  
250 E Street, SW  
Public Information Room  
Mailstop 1-5  
Washington, DC 20219  
Attention: Docket No. 04-12

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
Attn: 2004-27

Jonathan G. Katz, Secretary,  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, D.C. 20549-0609  
Attention: File No: S7-22-04

Re: Interagency Statement on Complex Structured Finance Activities

The American Securitization Forum (the "ASF")<sup>1</sup> would like to take this opportunity to thank the agencies listed above (the "Agencies") for this opportunity to comment on the proposed Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities (the "Statement") published in the Federal Register on May 19, 2004.

We strongly agree with the goal of the Agencies to provide a framework for risk management within financial institutions involved in complex structured finance transactions. The goal of implementing and refining comprehensive risk

---

<sup>1</sup> 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. The ASF also sponsors a wide range of informational and educational conferences, seminars and workshops for securitization market participants. ASF members include securitization issuers, investors, financial intermediaries, legal and accounting firms, rating agencies, financial guarantors, and other professional market participants. Additional information concerning the ASF, including its full membership and activities, may be found at [www.americansecuritization.com](http://www.americansecuritization.com).

*July 19, 2004*

2

management systems long has been, and will continue to be, a primary focus of member institutions of the ASF involved in these transactions. Therefore, we appreciate this opportunity to work with the Agencies to adopt guiding principles in this important area for financial institutions.

As the Agencies are aware, structured finance transactions, particularly securitization, have become a large and important segment of our economy. The securitization industry has developed as a large market that provides an efficient funding mechanism for originators of receivables, loans, bonds, mortgages and other financial assets. The industry performs a crucial role by providing liquidity to nearly all major sectors of the economy including the residential and commercial mortgage industry, the automobile industry, the consumer credit industry, the leasing industry, the insurance industry, pension funds, the bank commercial loan markets and the corporate bond market. Additionally, securitization has provided a means for banks to effectively manage credit and other risks by transferring those risks to other regulated and non-regulated institutions.

To provide an overall sense of the size and importance of the securitization market activity in the United States, over \$3 trillion of mortgage-backed securities and \$584 billion of asset-backed securities were issued in 2003. As of December 31, 2003, total MBS outstanding was \$5.3 trillion and total ABS outstanding was \$1.69 trillion.<sup>2</sup>

Because of the importance of securitization to our economy, changes to existing rules and implementation of new guidance must be carefully measured to promote sound risk management practices with sufficient flexibility so as to not unduly or unnecessarily restrict the operation and growth of this important market. As the Agencies noted in the Statement, a limited number of questionably structured finance transactions have led the Agencies to propose this new policy. We are concerned that, in responding to the problems seen in these few transactions, the Agencies have not struck the appropriate balance in this Statement. We would like to address several areas of high level policy concerns in this letter.

First, we are concerned that the scope of transactions that would be picked up under the proposal is far too broad—arguably any transaction with an SPE or that is reliant on the cash flows of financial assets could be subject to heightened scrutiny. Within the securitization market, the vast majority of transactions, such as securitizations of auto loans, credit card receivables, mortgages and home equity loans, trade receivables and equipment loans and leases, are very routine transactions structured

---

<sup>2</sup> The Bond Market Research Quarterly, May 2004.

*July 19, 2004*

3

to well-accepted market standards. Additionally, most securitization transactions are subject to rating agency review, providing an independent third party review of the fundamental soundness of a structure. To require heightened scrutiny of routine transactions, especially those that are rated, would not only be an administrative burden, causing increased delay and costs, but would also be counterproductive in that the volume of transactions being reviewed would be overwhelming and lessen the likelihood of the more thorough and comprehensive review contemplated by the Statement. We believe it is more appropriate, efficient and, in the end, conducive to better risk management, to separate the wheat from the chaff prior to subjecting transactions to heightened review. We encourage the Agencies to focus more sharply on the scope of the Statement such that only those more complex transactions that merit heightened scrutiny—because they in fact embody a heightened level of legal and reputational risk to the financial institution-- are covered.

Second, we are concerned that rather than simply providing a framework for risk management, the policies set forth in the Statement actually serve to create additional, and we feel inappropriate, risks and liabilities for financial institutions. We are most concerned that the Statement appears to make financial institutions responsible in all cases for the accounting and tax treatment and financial reporting and disclosure of a transaction by a customer. There is already in place a well-developed body of law and jurisprudence addressing the legal duties and responsibilities of financial institutions in connection with their clients' transactions, including liability for direct participation in fraudulent or other illegal conduct. The proposed guidance, however, goes far beyond these established legal principles and could make financial institutions responsible for their customers' structured finance transactions and related accounting and tax treatment and financial statement disclosures, no matter the nature or degree of their participation therein.

To substitute the judgment of a financial institution for that of its customers, as we feel the proposed Guidance does, is inappropriate. A financial institution is simply not in a position to police each transaction in the market, and is not and cannot be made responsible for compliance by its customers with applicable law and regulation. While we do believe that it is appropriate for financial institutions to make themselves available to a company and its auditors to discuss questions relating to the structure of a transaction, financial institutions do not have access to the individual facts and circumstances of each customer that are necessary to make judgments concerning the appropriate treatment of each transaction. Ultimately, that

is the responsibility of the management and auditors of the customer who do have access to the relevant information necessary to make informed decisions.

As proposed, by placing this burden on a financial institution, we believe that it is likely to result in a financial institution's being viewed as a de facto guarantor for a customer's compliance with applicable law and regulation. This shift of responsibility for customer compliance to financial institutions is directly counter to the notion that companies directly engaging in structured finance transactions are, and should remain, primarily responsible for ensuring the legality and appropriateness of the transactions in which they engage. We are concerned that the new and unwarranted legal duties and responsibilities could result in a diminution of the beneficial market activity of securitizations, as financial institutions will not want to assume the additional risks imposed by this Guidance. If this were to occur, issuers would lose a valuable source of financing for their business, the effects of which will ultimately be borne by consumers who are the beneficiaries of a strong securitization market.

We ask that the Agencies reconsider the level of responsibility of a financial institution relating to a customer's treatment of a transaction. We note that in the limited questionable transactions cited by the Agencies, it is clear that both individuals and regulators already have sufficient means to address the actions of financial institutions in transactions when appropriate. Furthermore, since the occurrence of these transactions, many institutions have strengthened their review systems related to securitizations and other structured finance transactions. These internal policies are both robust and sufficiently flexible to permit a bank to assess all relevant risks of a transaction. We hope that any Guidance actually implemented will be less rigid than the draft Guidance and will not continue to contain the specific requirements that could potentially do more harm than good in this important market.

Third, we believe that the proposals in the statement are overly rigid in that they do not appear to distinguish levels of responsibility based on the role of a financial institution in a particular transaction. For instance, the role of a trustee of securitization is much more limited in scope than that of an underwriter or investor in such a transaction. Trustees largely become involved in a transaction long after the structuring and negotiation have occurred and assume a role that is largely ministerial that commences upon the closing of a transaction. To place upon a trustee the scope of practices and procedures contemplated by the Statement is unwarranted and would significantly increase the cost and burden of transactions with marginally increased risk management. We encourage the Agencies to refine

*July 19, 2004*

5

the Statement to make clear that the level and type of scrutiny required for a transaction is flexible and should be tailored to the role that a financial institution actually plays in that transaction.

As indicated, our intent was to address several high level policy concerns with the Statement. In addition to these concerns, we also endorse the more comprehensive and detailed comment letter that is to be submitted by a joint working group of The Bond Market Association, the International Swaps and Derivatives Association and the Securities Industry Association.

Again, we thank you for this opportunity to comment on the proposed Statement and look forward to working with the Agencies to adopting a balanced policy for risk management procedures that will serve to strengthen the integrity of financial institutions and the markets in which they conduct structured finance transactions.

\* \* \* \*

\* \* \* \*

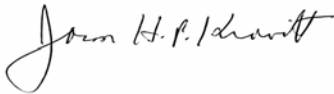
We appreciate this opportunity to comment on the these proposals.



Vernon H.C. Wright  
*Chairman, American Securitization Forum*  
*(MBNA America Bank)*



Greg Medcraft  
*Deputy Chairman,*  
*American Securitization Forum*  
*(Société Générale Securities Corp.)*



Jason H.P. Kravitt  
*Secretary, American Securitization Forum,*  
*Chairman of the Legal, Regulatory*  
*Accounting and Tax Committee of the ASF*  
*(Mayer, Brown, Rowe & Maw LLP)*