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Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Re: Release No. 34-64148, File No. S7-14-11

Ladies and Gentlemen:

Dewey & LeBoeuf LLP("**Dewey & LeBoeuf**") submits this letter in response to the request for comments of the Securities and Exchange Commission in its release, Credit Risk Retention, Release No. 34-64148, File No. S7-14-11 (the "**Release**"). The Release proposes rules to implement the credit risk retention requirements of Section 941 (b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which is codified as Section 15G of the Securities Exchange Ac of 1934. Generally, Section 15G and the proposed rules mandate the securitizer of asset-backed securities to retain not less than five percent of the credit risk of the assets collateralizing such securities.

Our letter proposes that, as permitted by Section 15G, the rules exempt a special class of asset-backed securities transactions from the credit risk retention requirements of Section 15G. These transactions, which we refer to as **"utility legislative securitizations"**, are used by regulated public utility companies to recover legislatively defined special classes of costs and assets in a fashion which minimizes the resulting charges to their customers. Utility legislative securitizations are authorized by specific state legislative action entitling the utility company to issue bonds backed by the right to impose and collect dedicated usage-based charges from the utility's customers for payments on the bonds.. The proceeds of the bonds are used to recover specified costs/assets, examples of which include, among others, stranded investments in infrastructure and transition costs arising in a transition from a monopoly to a competitive utility market, assets arising from storm recovery costs and certain pollution control investments. Although these transactions are asset-backed securities within the meaning of the Release, purchasers of the bonds are not exposed to the underwriting or structural risks typical of investment in an asset-backed security. We believe that the structural characteristics of utility legislative securitizations avoid the problems the credit risk retention requirements of Section 15G are designed to address. We argue that the imposition of risk retention in these transactions would reduce economic efficiencies benefitting utility customers, with no meaningful countervailing benefit to purchasers of the bonds, the utility or its customers.

Utility legislative securitizations have common structural characteristics. These characteristics include specific state legislation authorizing the securitization of specified costs/asset classes and the billing of the utility's customers on a non-bypassable basis for the debt service on the bonds.[1] The legislation requires the utility to seek and receive an irrevocable financing order from the state utility regulator. The financing order creates a present intangible property right to impose and collect a non-bypassable charge from the utility's customers in amounts necessary to service bonds issued to securitize the legislatively specified asset/costs. The intangible property right to bill its customers is typically sold by the utility to a special or limited purpose issuer, which sells the bonds to finance the purchase price. The non-bypassable nature of the obligation means that the utility's customers must pay amounts designed to service and amortize the bonds, whether or not such customers cease to obtain their power from the utility.

The issuer's rights are assigned to the trustee under the bond indenture as collateral. The sponsor utility typically fund special purpose issuers with cash equal to .5% of their capitalization. The legislation and financing order provide for a true-up rate mechanism, by which at least annually, and more frequently in some circumstances, the special charges to the utility's customers are reviewed and adjusted to correct for any under collection to insure the charges will be sufficient to provide timely payment of the principal and interest on the bonds. The legislation also provides for a pledge of the state and the legislature that until the bonds have been paid, the state and legislature will not impair the value of the securitization property or reduce, alter or impair the special charges to the utility's customers.

One reason that essentially all utility legislative securitizations conform to this general structure is the structure is reflected in Internal Revenue Service guidance (Revenue Procedure 2005-62). Under this guidance, the utility is not required to recognize income when it receives the proceeds of the bonds in return for the transfer of the intangible property rights under the finance order. Instead, the non-bypassable

[1] In these transactions, limited classes of customers (e.g., wholesale customers) may be exempted by the legislation, but uniformly the overwhelming majority of the utility's retail customers are legislatively identified as being responsible for the bond related charges.

charges are recognized as gross income to the utility under the utility's usual method of accounting.

The structural and credit risk characteristics of utility legislative securitizations are materially different from the asset-backed securities Section 15G is designed to address. In those cases, the risk of the securitizer with respect to the underlying assets is transferred by the securitizer to the bondholders when the assets are transferred, because the underlying obligors on the mortgages or other payment obligations being securitized have no remaining obligations to the secuitizer. In the typical securitization the risk of payment shortfalls are addressed by a credit cushion through overcollateralization calculated to be adequate to produce revenues needed to service the bonds even if a specified percentage of the underlying obligors default. If the default assumptions utilized in providing the overcollateralization level are wrong, the required bond payments will not be paid with no adverse consequence to the securitizer. These are the issues the "skin in the game" requirements seek to address, as articulated in the Release:

> As indicated in the legislative history of section 15G, "When securitizers retain a material amount of risk, they have 'skin in the game,' aligning their economic interest with those of investors in asset-backed securities." By requiring that the securitizer retain a portion of the credit risk of the assets being securitized, section 15G provides securitizers an incentive to monitor and ensure the quality of the assets underlying a securitization transaction, and thereby helps align the interests of the securitizer with the interests of investors. Release at page 19.

Utility legislative securitizations, as a result of their structure, satisfy the policy objective of a low-risk transaction in which the securitizer has no incentive or ability to make distinctions among its customers in determining which to transfer to the securitized pool of assets. In these transactions, the bondholder is not relying on the securitizer to choose well in creating and collateralizing the asset pool. This is because the bond charges are payable by essentially all of the utility's continuing customers with only limited exceptions and on a non-bypassable basis. As a result there is no risk of poor underwriting standards and adverse selection. In addition, in lieu of overcollateral reserves, utility legislative securitization transactions rely on a "true-up" mechanism provided for in the legislation and financing order whereby if payments are insufficient to satisfy the debt service requirements of the bonds, the charges to the utility customers are increased to the extent needed for timely debt service. The fact that there are literally tens of thousands of customers among whom the charges will be trued-up if there were a shortfall resulting from some customers failure to make payments minimizes credit risk in these transactions.

The foregoing structural elements have resulted in only the highest credit ratings and credit histories for the utility legislative securitizations which have been done to date. To our knowledge, there has not been a default in any of these transactions including during the recent credit crisis in the securitization markets generally. In fact in a July 2009 RatingsDirect® report Standard & Poor's notes that of the approximately $40 billion of these bonds issued at that point, all had retained their "AAA" ratings. It pointed out that "many of them have performed through severe natural disasters, an energy market crisis, one major utility bankruptcy, and now, the worst U.S. recession in 50 years". (July 8, 2009 RatingsDirect ® report at page 2).

Utility legislative securitizations are utilized because they have economic benefits for the utility's customers. They are special forms of financing designed to permit recovery of legislatively defined special classes of costs and assets by reflecting in customer charges low cost financing rates. The lower financing costs result from the high credit ratings made possible by the true-up feature and the absence of an equity return to the utility. Requiring credit risk retention will diminish these benefits, without, as shown above, a meaningful improvement in the transaction's risk profile. Utility legislative securitization charges to utility customers differ from ordinary utility rates, which are designed to permit a return of and on the utility's investment, based on, among other things its embedded cost of capital, including equity capital. Utility legislative securitizations do not include an equity financing component, thereby avoiding flowing through to the customer the higher costs of equity as opposed to debt financing. If the utility is required to acquire a 5 percent risk position in the securitization pool, under utility regulatory principles it would expect to recover this cost component in its charges to its customers.

Section 15G(c)(1)(G)(i) contemplates and permits the Commission to provide a total or partial exemption from the risk retention requirements for certain types of securitization transactions, as may be appropriate in the public interest and for the protection of investors. In addition, section 15G(e)(1) permits the Commission to adopt or issue additional exemptions, exceptions, or adjustments to the risk retention requirements of the rules, including exemptions, exceptions, or adjustments for classes of institutions or assets, if the exemption, exception, or adjustment would: (A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investor.

We respectfully submit that utility legislative securitization transactions as described above meet the standards for exemption from the risk retention requirements of Section 15G, as permitted by Sections 15G(c)(1)(G)(i) and 15G(e)(1) and that a general exemption from the rules be adopted. A utility legislative securitization is a type of financing that can only occur after findings by a state legislature and a public service commission that it is desirable in the interest of utility consumers and after utility executives representing the utility's investors seek such financing. The structure is used to minimize the costs of financing large asset/cost recoveries and the increase in the cost of such financing which would result from risk retention is not warranted, since it is not required to improve the credit quality of the bonds. As discussed above, this type of financing minimizes or avoids the risk of poor underwriting standards and adverse selection and minimizes credit risk, because the utility sponsor does not choose among its customers for inclusion or exclusion from the transaction and because the true up mechanism as applied to a utility's customers avoids the risks in typical asset-backed securities of inadequate collateralization levels.

Dewey & LeBoeuf thanks the Commission for the opportunity to comment on the Release. If you have any questions regarding this letter, please contact the undersigned.

Respectfully submitted,

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