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October 30, 2013

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

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street, SW
Suite 3E-218., Mail Stop 9W-11
Washington, DC 20219
Docket ID OCC 2013-0010

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket Number R-1411

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

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

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

Re: Request for Comment: Credit Risk Retention, File Number S7-14-11

Ladies and Gentlemen:

This letter is in response to the request for comment from the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Department of Housing and Urban Development (collectively, the "Agencies") on a proposed rule that re-proposes with modifications a previously proposed rule to implement the credit risk retention requirements of Section 15G of the Securities Exchange Act of 1934, as added by Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Proposal").

Invesco Ltd. ("Invesco") is a leading independent global investment management firm that provides a wide range of investment strategies and vehicles, including open-end and closed-end retail mutual funds, exchange-traded funds and institutional money market funds. Invesco is submitting this letter to express our views on the treatment of municipal tender option bonds ("TOBs") pursuant to the Proposal and to support the Investment Company Institute's ("ICI") comment letter dated as of October 30, 2013 (the "ICI Letter"). An affiliate of Invesco is submitting a separate comment letter dated as of October 30, 2013 expressing its view that it and other managers of open market collateralized loan obligations ("CLOs") are not subject to the credit risk retention requirements under Section 941 or under the Proposal or, if they are subject to such requirements, should be exempted pursuant to the agencies' discretionary authority.

I. TOBs Should Be Exempted from the Credit Risk Retention Rules

Invesco submitted a letter to the first request for comment dated August 11, 2011(the "2011 Invesco Comment Letter"),as the original proposed rules were silent on the applicability of the risk retention requirements to TOBs and we were concerned that the proposed rules would unintentionally negatively affect the TOB market. The revised Proposal does include options for TOBs to adhere to risk retention rules, but we continue to believe strongly that the final rules should explicitly exclude TOBs because they are fundamentally different from products traditionally designated as asset-backed securities ("ABS"). We therefore summarize and reiterate some of our points from the 2011 Invesco Comment Letter.

A central purpose of the Proposal is to require sponsors of ABS to retain for their own accounts a portion of the risk associated with the products they sponsor. TOBs are typically created by a sponsor bank through the use of a special purpose trust that holds long-term fixed rate bonds and sells two classes of beneficial interests: short-term floating rate interests, which are sold to third party investors, mainly money market funds; and inverse floating rate residual interests, which are purchased by mutual funds that, in most cases, provide the underlying bonds from their own portfolios. The short-term floating rate interests have first priority on the cash flow from the bonds held by the special purpose trust, and the holders of inverse floating rate residual interests are paid the residual cash flow from those bonds. The holders of the short-term floating rate interests may tender their interests for purchase by the trust at par and such tenders are backed by a liquidity facility from a highly rated financial institution. The holders of the inverse floating rate residual interests also have the option to redeem their interests at par on short notice. The TOB structure therefore provides liquidity that is not found with typical ABS products that are the primary subject of the Proposal.

The industry generally does not define TOBs as "structured finance products" and classifies TOBs as "derivative municipal securities," "tax-exempt derivative securities" or "inverse floating rate securities," not as ABS. ABS are defined as securities that represent ownership in pools of underlying assets that may include such items as motor vehicle installment sales contracts or installment loan contracts, leases of various types of real and personal property, and receivables from credit card agreements and from sales of personal property. ABS (and mortgage-backed securities) differ from more conventional municipal bonds in that the principal is paid back to the investor as payments are made on the underlying assets in the pool.

Additionally, the ability of an issuer of ABS to enforce its security interest in the underlying assets may be limited. In contrast, TOBs do not have such diversification of credit risk. The underlying bonds generally are from one original issuance and have the same issuer and borrower/obligor. Investors analyze the credit risk of the underlying borrower as they would for any other municipal investment, and the residual interests are deemed to have the same rating as that of the underlying bonds. In addition, the fund that selects the municipal bonds to be deposited into a TOB trust does so as a borrowing tool and retains virtually all of the risk related to such municipal bonds which should satisfy the policy objectives of the proposed rules. TOBs are offered pursuant to a separate set of disclosure documents that provides details of the TOBs' structure and tax treatment (in addition to the issuance documentation of the underlying bonds). TOBs typically are backed by a liquidity facility provided by a highly rated financial institution which affords yet another level of protection from risk not afforded by the traditional structured finance products that the Proposal seeks to address.

At $75-80 billion, the current TOB market continues to offer an important financing option for municipal issuers by providing access to a diverse investor base, a more liquid market and the potential for lower interest rates. If TOBs were subject to the risk retention requirements of the Proposal, the cost of such financing would increase significantly, sponsor banks would likely scale back the issuance of TOBs, and as a result, the availability of tax-exempt investments in the market would decrease. This impact would be particularly significant with respect to the short-term floating rate tranches of TOBs, which are most often purchased by tax-exempt money market funds that continue to face limited investment options due to investment constraints imposed by changes to Rule 2a-7 under the Investment Company Act of 1940 ("Rule 2a7").

Invesco manages a large number of funds, particularly closed-end funds, that invest in TOBs to create and maintain leverage and generate income. TOBs have also, to a significant extent, been utilized to retire outstanding auction rate preferred shares ("ARPS") issued by closed-end funds of Invesco and numerous other mutual fund complexes.

Consistent with the original proposed rules, the Proposal states that it is appropriate that securities issued or guaranteed by a state or municipality be exempted from the risk retention requirements[1]. Similarly, securities that are collateralized by such exempted securities should also be exempt from the risk retention requirements. Requiring the sponsors of TOBs and similar securities to retain risk would not further the goal of prudent underwriting and would impose an unnecessary burden on sponsors of such securities. Invesco therefore recommends that the exemption relating to ABS issued or guaranteed by a state or municipal entity be broadened to include securities collateralized by such exempt securities.

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[1] Proposal, p. 183.

II. Options for TOB Risk Retention Under the Proposal

The current Proposal does not offer a proposal to exempt TOBs from the risk retention requirements, but rather offers two additional risk retention options for TOBs (in addition to satisfying the requirement by complying with the standard risk retention methods (i.e. vertical, horizontal, or a combination thereof)). The Proposal provides that a sponsor of TOBs by a "qualified TOB entity"[2] may rely on one of the following options:

a. The sponsor may retain an interest that upon issuance meets the requirements of an eligible horizontal residual interest but that upon the occurrence of a "tender option termination event" as defined in Section 4.01(5) of IRS Revenue Procedure 2003-84, as amended or supplemented from time to time will meet requirements of an eligible vertical interest.

b. The sponsor may satisfy its risk retention requirements by holding municipal securities from the same issuance of municipal securities deposited in the qualified TOB entity, the face value of which retained municipal securities is equal to 5 percent of the face value of the municipal securities deposited in the qualified TOB entity.

In the event that the Agencies opt to not exempt TOBs from the risk retention requirements, we believe that the options available for TOBs outlined in the Proposal would benefit from additional clarification and modification in several respects.

A. Residual Holders Should Not Be Considered TOB "Sponsors"

The Proposal defines "sponsor" as "a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity." [3] In concert with the ICI Letter, we request confirmation that, for purposes of the Proposal: (1) the sponsor is the bank that creates the TOB program and (2) funds (or other institutional investors) that hold the residual interest may satisfy any risk retention obligations in the capacity of third-party purchasers. The

[2] An issuing entity that meets the following qualifications would be a "Qualified Tender Option Bond Entity:" (i) only two classes of securities are issued: a tender option bond and a residual interest; (ii) the tender option bond qualifies for purchase by money market funds under Rule 2a-7; (iii) the holder of a tender option bond must have the right to tender such bonds to the issuing entity for purchase at any time upon no more than 30 days' notice; (iv) the collateral consists solely of servicing assets and municipal securities as defined in Section 3(a)(29) of the Securities Exchange Act of 1934 and all of those securities have the same municipal issuer and the same underlying obligor or source of payment; (v) each of the tender option bond, the residual interest and the underlying municipal security are issued in compliance with the Internal Revenue Code of 1986, as amended (the "IRS Code"), such that the interest payments made on those securities are excludable from the gross income of the owners; (vi) the issuing entity has a legally binding commitment from a regulated liquidity provider to provide 100 percent guarantee or liquidity coverage with respect to all of the issuing entity's outstanding tender option bonds; and (vii) the issuing entity qualifies for monthly closing elections pursuant to IRS Revenue Procedure 2003-84, as amended or supplemented from time to time. Proposal, p. 157-159.

[3] Proposal, p. 32-33.

classification of residual holders as "sponsors" would result in problematic consequences, including the potential for additional implications for the residual holders under other federal securities laws and/or regulations, including Dodd-Frank and Rule 2-a7.

As described in Section I above, the residual holders typically select bonds of high credit quality for deposit into TOB trusts. However, the residual holders bear the vast majority of the market risk in a TOB transaction due to the ability of the floating rate holders to "put" back their certificates on demand for payment of par plus accrued interest. In addition, residual holders do not perform any of the other traditional functions of a sponsor, which in the case of TOBs are performed by a bank. These functions include the establishment of a "TOB program," solicitation of interest from potential residual holders, sales and remarketing of floating rate interests to money market funds and other investors, and overall coordination of the TOB trust creation with all parties, including counsel and the trustee bank.

The Proposal would also require that the "sponsor" provide to potential investors prior to the sale of the TOBs and, upon request, to the SEC, specified written disclosures. The general prohibitions on transfer and hedging under the Proposal would also apply to any municipal securities retained by the sponsor with respect to an issuance of TOBs by a qualified TOB entity. We believe that the Agencies need to provide more specific guidance on these rules and how they would apply to TOBs in particular.

B. Concerns Regarding Proposed Risk Retention Options for TOBs

The first option available for TOBs to meet the risk retention requirements under the Proposal is for a TOB trust to comply with the standard risk retention methods: (1) vertical; (2) horizontal; or (3) a combination thereof. We do not believe this is a practical solution for TOB trusts. Due to the limited supply of high-quality fixed-income municipal bonds, a fund that is a residual holder will almost always deposit 100% of the bonds it owns (or agrees to purchase) in a TOB trust. There is little or no economic benefit or rationale for a fund (or a bank sponsor) to "hold back" a portion of a bond issuance from deposit into the trust, particularly when a fund takes back the residual interest in the TOBs issuer and, as a result, will hold an interest with a functionally equivalent risk profile that should satisfy the policy objective of the Proposal. Importantly, the difference in the amount of risk inherent in owning the bonds outright vs. holding the residual interest in a TOB trust that owns those same bonds is immaterial. Therefore, this option as applied to TOBs does not meaningfully address the concerns at issue in the Proposal.

The second option in the Proposal states that the sponsor may retain an interest that upon issuance meets the requirements of an eligible horizontal interest but upon the occurrence of a "tender option termination event" ("TOTE") will meet the requirements of an eligible vertical interest. This option is not consistent with the typical TOB structure that is dictated by multiple complex tax considerations. The residual interest owner will not hold the most subordinate claim to payments of principal and interest by the issuing entity as required; rather the residual interest has a claim to cash flow based on the contractual agreement with the floater holders. In addition, the residual interest holder would not typically take any loss before the floater holders, and the residual holders do not have any claims against the original municipal bond issuer that would be subordinated to any claim of the floater holders.

The third option presented states that the TOB sponsor may satisfy the risk retention requirements by retaining five percent of the fair value amount of the municipal securities that are deposited into a TOB trust. We understand that this scenario might be problematic for bank TOB sponsors, as it would not only be operationally impractical, but also would result in administrative burdens and additional costs. These increased costs would in turn be reflected in increased TOBs pricing for residual holders such as the Invesco funds. A more drastic result would be that the current TOB providers would be less inclined to offer these products in the future.

C. Suggested Revisions to TOBs Risk Retention Options

We believe that if the Agencies do not decide to exempt TOBs from the proposed risk retention rules, the suggested options detailed above would need to be revised to conform to the realities of the structure of TOBs and common industry practice.

First, the third option discussed above could be modified to allow the bank sponsor or residual holder to purchase and retain an economic interest in the same municipal securities in the applicable TOB that is equal to five percent of the initial market value. However, there are several crucial considerations for a fund that is a residual holder if the fund were to retain this type of interest:

(i) The Proposal states that a "qualified TOB entity" must issue only a "single residual equity interest that is entitled to all remaining income of the TOB issuing entity."[4] In large fund complexes such as Invesco and others, it is common practice for the residual interests from one series of TOBs to be allocated among several funds. Each fund's investment policy needs to permit this type of investment, but there is no prohibition on allocating one series of TOB residual interests among funds with a common investment advisor. Through this allocation, smaller funds have access to a type of leverage that might not be possible for it to obtain on its own. We recommend that the definition of "qualified TOB entity" be broadened to include funds that engage in this type of TOB allocation. We agree with the ICI's strong belief that permitting several funds in a fund complex to hold residuals in a TOB trust is fully consistent with the regulatory objectives of the Proposal, as fund residual holders would still hold interests in a single class of securities, and having several fund holders would not change the alignment of interests of trust holders[5].

(ii) The five percent initial market value retention amount should be calculated at the time of purchase/issuance. As long as the fund as residual holder continues to hold the same par amount of the underlying bonds, no adjustments should have to be made, if during the life of the TOB trust the market value of those bonds fluctuates above or below the market value that is initially calculated. It would be impractical and costly for a fund to constantly monitor this amount and be expected to buy/sell bonds on a continual basis.

(iii) The five percent requirement must not be applied retroactively. Many TOB trusts currently hold 100% of a particular issuance of bonds (or 100% of the portion of the original issuance held by a fund or

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[4] Proposal, p. 439.
[5] ICI Letter, p. 10.

funds as residual holders). Requiring funds to sell off a portion of those bonds from the TOB trust would require an unwinding of the TOB trust. In the event that an existing TOB trust does not hold all of the bonds of a single issuance, there is no guarantee that the amount of eligible bonds needed to meet the requisite five percent could be purchased in the marketplace. In addition, the retroactive application of this and other proposed rules would most assuredly result in complications for market participants with regards to tax issues and operational concerns.

Second, we support the ICI's proposal of another risk retention option, which recommends that the Agencies deem a sponsor's risk retention requirement to be satisfied in a TOB Program transaction in which the residual interest holder is either (i) the same as, or an affiliate of, the entity that provides a liquidity facility, or (ii) an unaffiliated entity that either (a) agrees to subordinate its right to payment to the floater holders and the liquidity provider until the occurrence of a TOTE; or (b) agrees to reimburse the liquidity facility provider for any losses, in recognition of the fact that all of the market risk associated with the underlying assets is already borne by the residual interest holder.[6] As stated by the ICI, "... 100 percent market risk, along with the pro rata credit risk in the event of a TOTE, is a more than adequate substitute for a five percent credit risk under the proposed standard risk retention options. "[7] We believe that the risk retention requirement should also be satisfied if the residual holder is a third party that selects the municipal bonds to be placed in the TOB trust and is the primary beneficiary of the financing provided by the short term floater holders and retains the risk related to the municipal bond by owning the residual interest.

In summary, Invesco believes that TOBs are fundamentally different in nature from the "structured finance products" that the Proposal is intended to cover and that the application of the Proposal to TOBs would impact financial markets in a variety of unintended and unwelcome ways. We therefore urge the Agencies to make it clear that the Proposal does not apply to TOBs. In the event the Agencies decide to include TOBs within the scope of the Proposal, we respectfully request that consideration be given to Invesco's suggested alterations contained in this letter, as well as the comments submitted by the ICI and other TOB market participants.

If you would like to discuss this response in further detail or if you have any questions, please feel free to contact me at ([redacted] Thank you.

Sincerely,

Lyman Missimer

Lyman Missimer

Head of Municipals

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[6] ICI Letter, p. 12.
[7] ICI Letter, p. 13.