American SECURITIZATION FORUM®

6

July 26, 2005

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: **File No. SR-NASD-2003-141**
Additional Mark-Up Policy for Transactions in Debt Securities, Except Municipal Securities

Ladies and Gentlemen:

The American Securitization Forum (ASF) appreciates this opportunity to comment on the above-captioned policy interpretation proposed by the National Association of Securities Dealers, Inc. The ASF, an adjunct forum of The Bond Market Association (TBMA), is a broadly-based professional forum of participants in the U.S. securitization and structured credit markets. Among other roles, ASF's members act as issuers, financial intermediaries and investors in the large and growing securitization markets.[1] ASF seeks to identify and pursue industry consensus among these and other constituencies on important legal, regulatory, legislative and market practice issues affecting the broader securitization market and its participants. ASF's membership includes over 200 firms, including most of the largest and most active securitization issuers, investors, underwriters and broker-dealers. Additional information about the ASF, its members and activities may be obtained from our Internet website, located at www.americansecuritization.com.

The above-referenced proposal by its terms applies only to broker-dealers who are subject to NASD registration and supervision. Those broker-dealers have, both individually and collectively, expressed concerns about the potential adverse impact the proposed interpretation would have, if adopted, on their businesses and liquidity throughout the debt capital markets.[2] Other debt market participants, including institutional asset management firms, have voiced similar concerns.[3] Based upon discussions among its broader membership—including investors and issuers, as well as broker-dealers—ASF shares the concern that adoption of this proposal could produce

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[1] As of March 31, 2005, mortgage-related securities and asset-backed securities collectively accounted for $7.4 trillion, or approximately one-third, of all outstanding U.S. bond market debt. Issuance of asset-backed securities alone in 2004 totaled over $850 billion, an amount greater than the amount of investment grade and high yield corporate bond issuance combined. (Source: The Bond Market Association *Research Quarterly,* May 2005, available at http://www.bondmarkets.com/assets/files/RsrchQrtly505.pdf.

[2] *See*, e.g., letter dated April 5, 2005 from The Bond Market Association to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, regarding File No. SR-NASD-2003-141

[3] *See*, e.g., letter dated June 28, 2005 from the Senior Executives Group of the Asset Managers Forum to Jonathan Katz, Secretary, U.S. Securities and Exchange Commission, regarding File No. SR-NASD-2003-141.

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unintended and adverse effects on liquidity in key segments of the securitization markets, particularly lower rated, more highly structured and less actively traded instruments. We urge the NASD and SEC to reconsider this proposal and to pursue other, more effective (and less potentially harmful) means to regulate fair pricing in the securitization and broader debt capital markets.

Similar to other sell-side and buy-side market participants from whom you have heard, ASF's concerns with the NASD's proposed interpretation relate to the fact that (i) it focuses more on the amount of a dealer's mark-up and mark-down, rather than on the all-in price of a security and the relationship of that price to prevailing market prices for the same or similar securities, (ii) it establishes a presumption that contemporaneous cost is the best proxy for the prevailing market price, without adequately defining what is "contemporaneous" or attempting to define the prevailing market price when a security trades infrequently, (iii) it does not adequately clarify that "riskless principal transactions" require a binding commitment on both sides of a contemplated transaction, rather than mere expectations or expressions of customer interest, and (iv) it contains complex requirements for calculating mark-ups or mark-downs on a basis other than contemporaneous cost, which could discourage dealers from committing capital to the taxable fixed income securities markets, especially to relatively more risky securities and during times of pronounced market volatility.

Issuers of and investors in securitized products rely in significant measure on dealers to make markets in those instruments, particularly for less liquid issues. Issuers utilize securitization as an alternative—and frequently more efficient and less costly—source of funding for their business operations. Institutional investors of all types, including banks, insurance companies, money managers, pension plans, hedge funds and others, look to the securitization markets for products that can be tailored to meet their preferences for investment risk, yield and duration. Issuers and investors alike therefore benefit from liquid and efficient securitization markets. ASF is concerned that if dealers do not believe they can receive fair compensation for committing their capital and making markets in debt securities, they may be less willing to provide liquidity for precisely those types of securities for which issuers and investors most need such liquidity – relatively lower-rated and more highly-structured securitization instruments. These instruments tend to carry the highest yields, because they are lower in the capital structure, relatively illiquid and less actively traded (in comparison with more highly rated instruments) and therefore subject to more pronounced volatility. Any diminished capacity to issue and trade such products would damage the entire securitization market, because those products often provide the necessary subordination and credit support for investment-grade securities, which comprise the vast majority of all securitization classes that are issued and sold to investors.

We believe that the NASD's mark-up interpretation, which requires dealers to use "contemporaneous cost" unless there are no contemporaneous transactions in the same security, and then requires dealers to look to a complicated hierarchy of pricing sources to establish a basis other than contemporaneous cost for determining the prevailing market price, presents unreasonable compliance and evidentiary challenges for dealer participants in the securitization markets. In particular, the proposed hierarchy includes interdealer prices in the same or similar securities, but does not include prices in the dealer-to-institutional customer market. We do not believe this is logical or appropriate regulatory framework, given that the securitization markets are largely dealer-to-institutional customer markets in which dealers and investors alike engage in principal trading with each other.

Given the predominately institutional and principal-to-principal nature of the securitization market, investors in this market are, as a general matter, well-equipped to evaluate the fairness and reasonableness of pricing levels when purchasing or selling securities. They do not principally rely on regulatory oversight of dealer pricing to ensure that the prices at which they execute transactions are fair and reasonable, and are generally subject to other legal and regulatory duties to achieve best executions for their customers and beneficial account holders.

In any event, accepting the proposition that dealer pricing should be subject to some type of direct governmental regulation[4], ASF believes that the best evidence of prevailing prices in the securitization markets are prevailing yields for the same or similar securities. Even in the case of a highly structured securitization instrument, there are usually other, similar or analogous structured credit instruments whose prices and prevailing yields offer better and more reliable indications of current pricing levels than the "contemporaneous cost" of that particular instrument. As other commentators have noted, this is essentially the test used by the Municipal Securities Rulemaking Board (MSRB) for determining whether municipal bonds are being offered at the prevailing market price. We suggest that the Commission consider soliciting views from market participants as to whether this approach should be adopted as a common fair pricing standard throughout the debt securities markets.

We respectfully ask that the Commission consider the views and concerns expressed in this letter, and to engage in further inquiry and industry dialogue to advance the fundamental interest of the Commission and all market participants in promoting fair, liquid and efficient debt markets. We would be pleased to work with the staff of the Commission in this regard.

[4] ASF's investor members generally support governmental regulation of dealer pricing, and wish to emphasize that their concerns relate to adverse liquidity impacts that could result from the methodology proposed for calculating mark-ups, and not to the concept of pricing regulation per se.

Thank you for this opportunity to submit our views. Should you have any questions or desire additional information, please do not hesitate to contact either of the undersigned, or George Miller, Executive Director of ASF, at 646.637.9216.

Very truly yours,

Debbie Cunningham for Bianca Russo for

Debbie Cunningham
Federated Investors
Chair, ASF Investor Committee

Bianca Russo
J.P. Morgan Securities Inc.
Chair, ASF Regulatory Subcommittee

cc: ***U.S. Securities and Exchange Commission***

The Hon. Cynthia A. Glassman, Acting Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Roel C. Campos, Commissioner
The Hon. Harvey J. Goldschmid, Commissioner
Giovanni P. Prezioso, General Counsel
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