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## CREDIT RISK RETENTION – JOINT REGULATORY PROPOSED RULES

*The proposed rules delineate the credit risk retention requirements for securitizations as mandated by the Dodd-Frank Act, the premium capture cash reserve account required for certain securitizations, and the prohibitions of transfers or hedging of the retained risk. The rules also provide exemptions for securitizations of certain high-quality assets, notably “qualified residential mortgages” and certain other ABS backed by qualifying commercial loans, commercial mortgages, or auto loans.*

By Howard Altarescu *et al.* \*

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the FDIC, the SEC, HUD, and the Federal Housing Finance Authority (the Agencies), have jointly proposed a set of rules to implement the credit risk retention requirements of Section 15G of the Securities Exchange Act of 1934, which was added by Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The supplementary information that accompanies the proposed rules includes approximately 200 specific questions on which comments were sought. Comments on the proposed rules were originally due by June 10. The comment period has been extended to August 1.<sup>1</sup>

### CURRENT STATUS OF PROPOSED RULES

This article provides a high-level summary of the proposed rules. Since the proposed rules were first published in March 2011, securitization industry participants, including issuers and investors, in every

sector of the market, have carefully studied and developed comprehensive views on the proposals. Industry participants have worked and are working together to provide the regulators with comment letters recommending changes to the proposed rules. These comment letters with which the authors of this article are familiar strive to allow the purposes and principles of the proposed rules to be achieved while allowing securitizations to work efficiently and continue to provide a vital source of financing to businesses of every kind in the United States.

### SCOPE OF THE PROPOSED RULES

Generally, the proposed rules require a sponsor of a publicly registered securitization, or of a private placement, to retain at least 5% of the credit risk related to the securitization and prohibit the transfer or hedging, and restrict the pledge, of the risk that the sponsor is required to retain. No risk retention is required with respect to securitizations of residential mortgages, commercial loans, commercial mortgages, or auto loans if all of the underlying assets in a securitization comply with the qualification provisions set forth in the proposed rules for those asset classes.

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<sup>1</sup> U.S. Securities and Exchange Commission Release No. 34-64603; File No. S7-14-11.

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