American Securitization Forum
An Affiliate of SIFMA

March 17, 2009

Basel Committee on Banking Supervision
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Re: Consultative Document - revisions to the Basel II market risk framework

Ladies and Gentlemen:

The American Securitization Forum ("ASF")[1] supports the efforts of the Basel Committee on Banking Supervision (the "Committee") to address weaknesses in the risk-based capital framework that have been revealed by the recent financial market disruptions. We are writing to comment solely on some interpretive issues relating to one aspect of the proposed changes to the Committee's market risk rules: the definition of re-securitization exposure. We also support the comments being made jointly by the International Swap Dealers Association, the Institute of International Finance, the London Investment Banking Association and the International Banking Federation.[2]

We recognize the role played by CDOs of ABS[3] in bringing on the current market disruptions, and we agree that additional capital should be required for at least some re-securitization exposures. Our concern is to avoid having structures that may superficially

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[1] 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. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com. The ASF is an independent affiliate of the Securities Industry and Financial Markets Association.

[2] Various ASF members may submit other comments, directly or through other trade associations. We also expect to comment separately on the proposed banking book changes and accompanying Pillar 2 and 3 proposals.

[3] We use the following acronyms in this letter: ABCP means asset-backed commercial paper; ABS means asset-backed securities; CDO means collateralized debt obligation; and SPE means special purpose entity.

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resemble CDOs of ABS become subject to the increased capital requirements if they do not actually involve the types of double-leveraging and increased correlation risks that the additional capital requirements are meant to address.

There are at least three common ABS market structures that may be characterized incorrectly as re-securitizations. Two of these structures (credit card issuance trusts and auto lease titling trusts) appear primarily in the U.S., while the third (some ABCP) is more international in scope. There may be other examples in other markets, and it may not be practical for the Committee to analyze fully all potentially affected structures. Consequently, we believe an appropriate course of action for the Committee would be to leave flexibility for national regulators to make judgments as to structures common in their respective markets during the implementation process.

Credit Card Issuance Trusts and Auto Lease Titling Trusts

Both credit card receivables and retail auto leases are commonly securitized using structures where the receivables backing one or more series of securities are held by one trust (sometimes more than one, in the case of credit card receivables), and securities are issued to investors by a second trust (an "issuing trust") that holds beneficial interests in the first trust (or trusts). These multiple-trust structures were devised for various legal and other reasons. In each case, however, the economic experience of holders of the securities issued in these structures is substantially identical to what it would be if the issuing trusts held the underlying receivables directly. The cash flows that service the securities are subject to credit tranching only at the level of the issuing trust (though some fees or other expenses may be covered at the level of the receivables-holding trust(s)).

Because there is no credit tranching at the level of the receivables holding trust(s), we do not believe that the beneficial interests held by the issuing trusts are "securitization exposures", under the current definitions as properly applied. Under that interpretation, these structures would not be re-securitization exposures, which we also believe is the correct result. Nevertheless, some additional interpretive guidance may be helpful on this point.

ABCP

The analysis of ABCP is more complicated, in part because ABCP has been issued in a large variety of structures. Some of those structures should properly be treated as re-securitizations, such as ABCP issued as a tranche in a CDO of ABS. We believe, however, that there is a large amount of ABCP that does not involve the types of double-leveraging and increased correlation risks that the proposed capital treatment of re-securitizations is meant to address. Because of the diversity of structures involved, we are still working on criteria to suggest which ABCP should and should not be treated as a re-securitization exposure. We expect to submit additional thoughts on this point in our comment letter relating to the Committee's consultative document on proposed enhancements to the Basel II framework.

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Thank you for this opportunity to comment on the consultative document relating to market risk. If you have any questions about this comment, please feel free to contact the undersigned (in the U.S. at 212.506-2622; jkravitt@mayerbrown.com) or Rob Hugi, of Mayer Brown LLP (in the U.S. at 312.701-7121; rhugi@mayerbrown.com), who acted as counsel for the ASF in preparing this letter.

AMERICAN SECURITIZATION FORUM

By: Jason Kravitt, Deputy Chair