



June 14, 2011

Office of the Comptroller of the Currency  
250 E Street, SW  
Mail Stop 2-3  
Washington, DC 20219  
*By E-mail: [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)*  
*Re: Docket No. OCC-2011-0002*

Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, NW  
Washington, DC 20552  
Attn: Alfred M. Pollard, General Counsel  
*By E-mail: [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov)*  
*Re: RIN 2590-AA43*

Board of Governors of the Federal  
Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Attn: Jennifer J. Johnson, Secretary  
*By E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)*  
*Re: Docket No. R-1411*

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Attn: Elizabeth M. Murphy, Secretary  
*By E-mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)*  
*Re: File Number S7-14-11*

Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429  
Attn: Robert E. Feldman, Executive Secretary  
*By E-mail: [Comments@FDIC.gov](mailto:Comments@FDIC.gov)*  
*Re: RIN 3064-AD74*

Department of Housing and Urban  
Development  
451 7<sup>th</sup> Street, SW  
Room 10276  
Washington, DC 20410-0500  
Attn: Regulations Division, Office of  
General Counsel  
*By Website: [www.regulations.gov](http://www.regulations.gov)*  
*Re: Docket No. FR-5504-P-01*

**Re: Credit Risk Retention**

American Express Company (“American Express”) appreciates the opportunity to submit this letter in response to the request for comment by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Authority, the Securities and Exchange Commission and the Department of Housing and Urban Development (together, the “Regulators”) on the Regulators’ jointly proposed 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 “Proposed Rules”).

We are submitting this letter to offer our firm support for the comment letter submitted on June 10, 2011 by the American Securitization Forum (the “ASF”) as it relates to the application of the Proposed Rules to the credit and charge card securitization market and American Express’ asset-backed securities programs. American Express is a member of the ASF and has actively participated in the preparation of the portions of the ASF’s comment letter relevant to the credit and charge card asset-backed securities market, and we concur with and support the analysis, commentary and recommendations contained therein.

In addition, two of the items discussed in the ASF’s comment letter are of particular importance to us due to unique aspects of American Express’ credit and charge card asset-backed securities programs. We discuss these items in detail below.

### **American Express’ Asset-Backed Securities Programs**

The American Express Credit Account Master Trust (the “Lending Trust”) is an issuer of securities backed by receivables generated in a portfolio of designated consumer revolving credit accounts originated by certain affiliates of American Express. The Lending Trust was formed in January 1996 and, since that time, has issued approximately \$58 billion in asset-backed securities, making it one of the most active issuers of credit card asset-backed securities during that period.

The American Express Issuance Trust (the “Charge Trust”) is an issuer of securities backed by receivables generated in a portfolio of designated consumer, small business and commercial charge accounts originated by certain affiliates of American Express. The Charge Trust was formed in May 2005 and, since that time, has issued approximately \$8 billion in asset-backed securities. The Charge Trust is the only major issuer of charge card asset-backed securities.

Together, the Lending Trust and the Charge Trust have served as key sources of liquidity and funding for American Express and have allowed American Express to make more affordable credit available to consumers and businesses. As is the case with the securities issued by others in the credit and charge card asset-backed securities market, the performance of the securities issued by the Lending Trust and the Charge Trust has been consistently strong throughout their issuance histories, including during the recent financial crisis. Furthermore, each of the Lending Trust and the Charge Trust has all of the additional features described by the ASF as being typical in the credit and charge card asset-backed securities market that align the interests of originators and sponsors with those of investors.<sup>1</sup>

### **Comments on the Proposed Rules**

We agree with the Regulators’ objective of aligning the economic interests of securitizers with those of investors in asset-backed securities. We further agree with, and appreciate, the Regulators’ goal of defining the seller’s interest option available to revolving asset master trusts

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<sup>1</sup> These features include (i) the originator’s continued ownership of the accounts in which securitized receivables are originated, (ii) the transferor’s interest in a proportional share of the assets of the issuing entity, (iii) the transferor’s right to receive excess spread and (iv) the transferor’s right to funds on deposit in certain trust accounts that remain after covering payments, losses and other amounts allocated to investors.

in a manner that is consistent with current market practice. However, we identify below two ways in which the proposed seller's interest option is, or may be, inconsistent with American Express' current asset-backed securities programs.

### *Multiple Sponsors*

Where two or more entities each meet the definition of sponsor for a single securitization transaction, the Proposed Rules would require that at least one of the sponsors retain an economic interest in the credit risk of the underlying assets in accordance with the requirements proposed by the Regulators. The Lending Trust has two sponsors: American Express Centurion Bank and American Express Bank, FSB. Each sponsor originates credit card receivables and transfers the securitized portion of those receivables to a wholly-owned depositor. The two depositors, in turn, transfer to the Lending Trust the receivables they obtain from their respective parent sponsors. Pursuant to an agreement between the depositors, each depositor holds an interest in the seller's interest that is allocated between them based on their respective contributions to the aggregate amount of the receivables held by the Lending Trust.<sup>2</sup> While the program documents require that a minimum seller's interest in excess of 5% be maintained, the program documents do not require that either depositor hold a portion of the seller's interest that, by itself, would exceed the 5% threshold.

Nevertheless, because the financial statements of both depositors are consolidated with those of their common parent, the organization's overall financial exposure to the credit risk of the securitized assets would at all times exceed 5%. We therefore maintain that even if each depositor were to have a seller's interest below 5%, the fact that the two depositors together at all times have a seller's interest in excess of 5% would satisfy the objectives of the risk retention rules.

We therefore respectfully request that the Proposed Rules be revised to allow two or more consolidated affiliate depositors for a single revolving asset master trust to share an interest in the seller's interest so long as their aggregate seller's interest equals or exceeds the 5% level required in the seller's interest option under the Proposed Rules.

### *Charge Cards*

As discussed above, the Charge Trust is the only major issuer of charge card asset-backed securities. In the proposing release that accompanied the Proposed Rules, the Regulators referenced "revolving lines of credit, such as credit card accounts or dealer floorplan loans" as examples of asset types that would typically utilize the revolving master trust structure.

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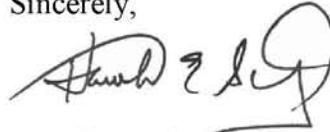
<sup>2</sup> In describing the involvement of the depositors in the structure, we assume that a depositor that is a consolidated affiliate of the sponsor in a credit or charge card securitization may hold the seller's interest from the inception of the securitization transaction, as is requested in the comment letter submitted by the ASF. As described by the ASF, prohibiting the depositor in a multi-step credit or charge card securitization structure from initially holding the seller's interest would result in an unnecessary and problematic inconsistency with market practice and existing structures.

While there are differences between charge card accounts and credit card accounts,<sup>3</sup> both are “revolving accounts” in that their balances fluctuate based upon ongoing extensions of credit. We believe it was not the Regulators’ intention to differentiate between these two types of products, as the Proposed Rules focus on the term “revolving account.” However, for the avoidance of doubt, we support the ASF’s request that the Regulators clarify that the term “revolving account,” as used in the Proposed Rules, includes both credit and charge card accounts (among other appropriate types of accounts, such as dealer floorplan loans).

In conclusion, we reiterate our firm support for the comment letter submitted by the ASF as it relates to the credit and charge card securitization market and American Express’ asset-backed securities programs, and we appreciate the opportunity to highlight certain issues as being of unique interest to American Express.

We thank the Regulators for providing American Express with the opportunity to comment on the Proposed Rules. Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me by telephone at (212) 640-1444 or by e-mail at [harold.e.schwartz@aexp.com](mailto:harold.e.schwartz@aexp.com), or American Express’ outside counsel on these matters, Alan M. Knoll of Orrick, Herrington & Sutcliffe LLP, by telephone at (212) 506-5077 or by e-mail at [alanknoll@orrick.com](mailto:alanknoll@orrick.com).

Sincerely,



Harold E. Schwartz  
Vice President and Senior Counsel

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<sup>3</sup> For example, charge card accounts generally have no pre-set spending limit and are designed for use as a convenient method of payment for the purchase of merchandise and services. Charge accounts generally cannot be used as a means of financing such purchases. Accordingly, the full balance of a month’s purchases is billed to accountholders and generally is due upon receipt of the billing statement. By contrast, credit card accounts generally allow customers to make a minimum monthly payment and to borrow from the credit issuer the amount remaining under a predetermined limit.