

following discussion, the term "trust" includes partnerships, special purpose corporations or limited liability companies. The term "certificate" includes a security which is either a pass-through certificate or a security denominated as a debt security that is issued by one of the above-enumerated entities.

Securitization transactions in which the assets of the securitization vehicle reflect the following categories of receivables (all of which are also described in more detail below) are referred to herein as "Designated Transactions": (1) Automobile and other motor vehicle loans, (2) residential and home equity loans (which may have high loan-to value (HLTV) ratios in excess of 100%), (3) manufactured housing loans and (4) commercial mortgages.

Trust Structure

6. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. Prior to the closing date under the pooling and servicing agreement, the sponsor or servicer of a trust establishes the trust, designates an entity as trustee, and, except to the extent a pre-funding account, as described below, will be used, selects assets to be included in the trust. The assets are receivables, which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust. In some cases, legal title to some or all of such assets continues to be held by the originator of the receivable until the closing date. On the closing date, the sponsor and/or the originator of the receivables conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. RBC-DR, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. RBC-DR currently anticipates that the public offerings of certificates will be underwritten by it on a firm commitment basis. In addition, RBC-DR anticipates that it may privately place certificates on both a firm commitment and an agency basis. RBC-DR may also act as the lead or co-

managing underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities (*i.e.*, permissible investments), which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month.

Furthermore, in those cases where distributions are made semiannually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to, or made available to, each rating agency that has rated the certificates.

The trust may elect to be treated as a real estate mortgage investment conduit ("REMIC") or a financial asset securitization investment trust ("FASIT"), or may be treated as a grantor trust or a partnership, for federal income tax purposes.

7. Some of the certificates will be multi-class certificates. RBC-DR requests exemptive relief for two types of multi-class certificates: "strip" certificates and "senior/subordinate" (also sometimes referred to as "fast pay/slow pay") certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each

representing rights to disproportionate payments of principal and interest.¹²

"Senior/subordinate" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. Except as permitted in a Designated Transaction, the rights of a plan purchasing a certificate will not be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, unless the certificates are issued in a Designated Transaction, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.¹³

8. For tax reasons, the trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a

¹² When a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to federal income tax under the Code. The prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

¹³ If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investments in such subordinated certificates, unless such certificates are issued in a Designated Transaction.

solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The Applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in such trusts may be plan assets.