



July 30, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
File Number: S7-08-10

Dear Ms. Murphy:

The undersigned professional appraisal organizations¹, representing approximately 35,000 professional appraisers in the United States, appreciate the opportunity to comment on the above-referenced proposed rule regarding the offering process, disclosure and reporting for asset-backed securities. The rule would require issuers, as part of prospectuses and Exchange Act reports, to disclose a variety of data points for each loan in pools of residential and commercial mortgage-backed securities. One of those data points involves information on the value of property collateralizing a loan. While we strongly support the Commission's decision to increase the quality and quantity of information available to investors in asset-backed securities, including the need for loan-level information on the value of collateral property, we believe that the proposed rule's valuation provisions are seriously deficient and must be strengthened if investors are to be properly informed about and effectively protected from inappropriate risk.

Our organizations would appreciate an opportunity to meet with SEC representatives to discuss our concerns and describe changes to the valuation provisions of the proposed rule that we believe are necessary to foster investor confidence in the loan-level values assigned to properties collateralizing asset backed securities.

I. Executive Summary

Our Organizations Strongly Support The Purposes of the Proposed Rule, Including The Importance To Investors of Information On The Value of Loan-Level Assets: Our organizations support the premise of the proposed rule that if investors have access to detailed and standardized loan-level information about asset-backed securities, their financial risk and their undue reliance on credit ratings will be significantly reduced. We strongly support the proposed rule's inclusion, among the loan level data points to be provided to investors in asset-backed securities, of information about the value of property collateralizing each loan in a pool of loans. Reliable valuations of property

¹ Each of our organizations teaches, tests and credentials its members for professional appraisal practice in the area of commercial and residential real property valuation. Additionally, the American Society of Appraisers (ASA) is a multi-disciplinary appraisal organization that teaches, tests and credentials its members for professional appraisal practice in business valuation and in personal property valuation (including fine arts and machinery and technical specialties).

collateralizing loans are key components for measuring the potential for losses to lenders and to investors in securitized loans, in the event of borrower default.

II. Valuations Involving Residential & Commercial Mortgage-Backed Securities

The Valuation Requirements of the Proposed Rule Fall Far Short Of What Is Necessary To Inform and Protect Investors In Residential and Commercial Mortgage-Backed Securities: Although our organizations strongly support the concept and purposes of the proposed rule, the provisions which address the valuation of loan-level collateral property fall far short of what is required to ensure investors of the reliability and independence of those valuations. As currently written, we believe the valuation provisions will seriously undermine the proposed rule's essential public policy purposes which are to equip investors with "necessary tools" to fully understand the risk underlying asset-backed securities and to promote more efficient asset-backed markets.

There are two fundamental problems with the proposed rule's valuation provisions:

First, they completely ignore the need for uniformity in how values are determined. Instead, they permit issuers of mortgage-backed securities to select from an almost limitless menu of valuation methods, approaches and sources for establishing loan-level asset values. This allows and encourages issuers to pick-and-choose whichever sources of value they believe will best suit their offering purposes.

Second, the proposed rule fails to establish any qualification requirements or standards of care and/or competency for valuations performed in connection with mortgage-backed securities. Specifically, they make no distinction between valuations performed by credentialed professional appraisers in accordance with generally accepted Uniform Standards of Professional Appraisal Practice (USPAP) on one hand; and those derived from valuation products that are widely recognized as lacking reliability and credibility, on the other (e.g., broker price opinions (BPOs); property tax assessments; and automated valuation models (AVMs)).

We find it ironic and, frankly, extremely troubling that while mortgage reforms included in the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111- 203) mandate much greater reliance than ever before on professional appraisals to value collateral property in federally-related transactions, the Commission's proposed rulemaking permits issuers of mortgage-backed securities to utilize BPOs, AVMs and tax assessments which the new law prohibits or discourages.²

The decision of Congress to require the use of professional appraisers to value property in most federally-related transactions was based on an extensive public record which casts serious doubt on the reliability and objectivity of alternative valuation products. For example, in recent testimony before Congress by the Special Inspector General for the Troubled Asset Relief Program (TARP) and in its reports, the use of professional appraisals are urged for all federal mortgage relief housing programs; and broker price opinions are characterized as exposing those programs to fraud. Also recently, a decision of a federal District Court in San Francisco involving a consumer's law suit against a mortgage lender, AVMs were characterized as "black boxes" no one currently understands. Additionally, the underwriting requirements of the federal housing agencies (FHA and VA) mandate reliance on professional appraisals to value

² For example, section 1126 (a) of the new Act prohibits broker price opinions from being used as the primary basis for valuing collateral property in a mortgage loan for a consumer's principal dwelling.

property for all mortgages they guaranty; and, the policies of the government sponsored enterprises (Fannie Mae and Freddie Mac) mandate reliance on professional appraisals to value property for most of the mortgages they purchase for sale into the secondary markets. We believe it is likely that the valuation policies for residential mortgage-backed securities in the proposed SEC rule conflict with the valuation requirements of Fannie Mae and Freddie Mac.

Providing investors with more detailed and more frequent loan-level valuation information, as the proposed rule does, will be of little benefit if the valuations themselves lack credibility, integrity and uniformity.

RECOMMENDATION: We strongly urge the Commission to revise the valuation provisions of its final rule to require issuers of mortgage-backed securities (and those with ongoing Exchange Act reporting requirements relative to those securities) to utilize state certified and licensed professional real property appraisers and adherence to the Uniform Standards of Professional Appraisal Practice (USPAP) to value loan-level real estate and real property collateral assets. The state certification and licensing system effectively and comprehensively addresses the qualifications (education, experience, training and continuing education) required to perform both simple and complex residential appraisal assignments as well as those necessary to perform commercial valuation assignments.³ The SEC's valuation requirements for residential and commercial MBS could readily track these well-known and long-standing federal policies.

While there may be situations in which alternative valuation products could be used to supplement or provide a check on professional appraisals in connection with MBS, it is entirely inappropriate, as a matter of sound public policy, for these products to constitute the primary source of valuation information for investors. It has been standard practice over many years for agencies of the federal government to require the use of state certified and licensed appraisers, and adherence to USPAP, in connection with real property appraisals they regulate or utilize for administrative purposes. Given the important purposes of the proposed rule, the SEC should do so as well.

III. Valuations Relative To Non-Real Property Asset-Backed Securities

The Proposed Rule Lacks Valuation Guidance For Non-Real Property Asset-Backed Securities: The proposed rule addresses multiple categories of asset-backed securities that are not collateralized by real property (e.g., loans secured by automobile sales and leases; loans backed by machinery and equipment sales and leases) and requires loan-level valuations of those assets, but it fails to provide any guidance on standards for how these non-real property assets should be valued and who possesses the qualifications to value them. We recognize that mortgage-backed securities are the dominant form of asset-backed securities sold to investors. Nevertheless, the proposed rule covers other significant classes of asset-backed securities (with an estimated outstanding value of \$2.5 trillion), such as loans securitized by Automobiles; Agriculture and Manufacturing Equipment; Corporate Debt; and Student Loans. The absence of Commission guidance on uniform valuation standards and qualifications for valuing non-real property loan-level assets, introduces unacceptable and easily avoidable uncertainty over the reliability of and usefulness to investors, of these valuations.

³ The appraiser certification and licensing system applicable to federally-related transactions was established by statute in 1989 and involves collaborative responsibilities of federal and state agencies and the not-for-profit Appraisal Foundation recognized by Congress as the authoritative source of appraisal standards (USPAP) and appraiser qualifications.

Unlike the valuation of real estate and real property assets in connection with federally-related transactions – where there is a detailed system in place involving the certification and licensing of real estate appraisers by states and state supervision of them – there is no state licensing system in place for non-real property appraisers. Nevertheless, professional appraisers who practice business valuation or who value tangible or intangible personal property, do adhere to the Uniform Standards of Professional Appraisal Practice (or standards which are consistent with the substance and principles of USPAP) and to generally-accepted qualification requirements. While these individuals are not state licensed/certified as appraisers, they are credentialed by generally-recognized professional appraisal organizations, such as the American Society of Appraisers, the American Institute of Certified Public Accountants, which offers a business valuation credential, and several other national organizations.

Indeed, the Internal Revenue Service has proposed final regulations governing tax-related appraisals for all categories of property which track the policies briefly described above.⁴ IRS' proposed final regulations state that in order for an appraisal to be considered "qualified" it must adhere to "generally accepted appraisal standards," meaning "the substance and principles of the Uniform Standards of Professional Appraisal Practice (USPAP)." IRS defines the term "qualified appraiser" to mean "an individual with verifiable education and experience in valuing the relevant type of property for which the appraisal is performed" including someone who has earned a "recognized appraisal designation..." from "a generally recognized professional appraisal organization that regularly offers educational programs in the principles of valuation."⁵ The undersigned organizations meet this definition.

In connection with the issues of credentialing and compliance with generally accepted valuation standards for non-real property appraisals, we wish to point out that one of the signatories to this letter, the American Society of Appraisers, teaches, tests and credentials individuals not only in the valuation of residential and commercial real property (as do all of our organizations), but also in business valuation (i.e., valuing the tangible and intangible assets of businesses) and personal property valuation (e.g., machinery, equipment and technical specialties; gems and jewelry and fine art). Other professional appraisal organizations do so, as well.

RECOMMENDATION: We urge the Commission to review IRS' pending valuation requirements and to include them – or a reasonable facsimile thereof – in its final rule. If the purposes of the proposed rule are to be achieved, the SEC must provide specific guidance relative to the valuation of assets collateralizing non-real property securities, including the adoption of generally-recognized uniform valuation standards and the qualifications necessary to value the specific types of property collateralizing the asset-backed securities.

IV. The Proposed Rule's Reference (In Schedule L) To The Appraisal Credential Of Only One Professional Appraisal Organization Is Inappropriate

We disapprove of the reference to the valuation credential of only one professional appraisal organization in Table 1, Schedule L, Item 3 "Commercial mortgage item requirements." Item 3(b)(8) calls for the issuer of a commercial mortgage backed security (and possibly those with Exchange Act ongoing

⁴ REG-140029-07, "Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions."

⁵ With respect to "verifiable education and experience" and "designations" for real property appraisal practice, the IRS rulemaking requires a state appraiser certification or license.

reporting requirements) to check off one of six code numbers indicating the source of the most recent valuation of properties collateralizing the commercial loans making up the pool (to appear in EDGAR). Two of the six codes reference the MAI credential awarded by the Appraisal Institute.⁶ We oppose this single-source reference and believe it to be inappropriate for a variety of reasons: First, there are a number of nationally recognized professional appraisal organizations (including each of the undersigned) which award highly qualified individuals with a credential for valuing commercial real property and interests in property, a credential that is comparable to the MAI awarded by the Appraisal Institute. There is no objective basis whatsoever for the SEC or any other federal agency to determine that as a matter of public policy one professional appraisal organization and its members are superior to all other nationally recognized professional appraisal organizations; Second, the reference to only one appraisal organization in a regulation issued by the Commission or by any federal agency is not only anti-competitive, it creates a monopoly for the appraisal services of that one organization; and, Third, reference to one appraisal organization by a federal agency in connection with its regulatory responsibilities violates the spirit and very likely the letter of the anti-discrimination provision of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). That Act established the State appraiser certification and licensing system in the U.S. and mandated the use of state certified and licensed real estate appraisers for federally-related transactions. Section 1122 (d) of the Title prohibits a covered federal agency from establishing criteria for an appraiser, in addition to certification and licensing, that excludes someone solely because they lack membership in any particular nationally recognized professional appraisal organization. The exclusive references to MAI appraisers in Schedule L, violates that statutory prohibition;

RECOMMENDATION: We believe it is appropriate, as a matter of public policy, for a federal agency which utilizes or regulates appraisal services to consider the fact that individuals with designations from nationally recognized professional appraisal organizations generally have greater experience, education and training than individuals with only a state appraiser certification or license. If the Commission should decide that in addition to a State general certified appraiser credential, individuals valuing loan-level commercial property assets in connection with commercial mortgage-backed securities should have a designation from a nationally recognized professional appraisal organization, we recommend that the credentials of all such organizations, including our own, be listed under Item 3(b)(8) of Schedule L. There is no circumstance, purpose or reason which would justify the SEC's final rule singling out and listing the appraisal credential of only one professional appraisal organization.

Thank you for considering our views. If you have questions or need additional information, please contact the American Society of Appraisers' government relations representative in D.C., Peter Barash at 202-466-2221 (peter@barashassociates.com); or the American Society of Appraisers' Director of Government Relations, John D. Russell at 703-733-2103 (jrussell@appraisers.org).

Sincerely,
ASA
ASFMRA
NAIFA

⁶ The other code references are: # 1 broker's price opinion; # 4 Master servicer estimate; # 5 SS estimate; and # 98 Other.