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November 12, 2010

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: **File No. S7-26-10**
Release No. 33-9150
Proposed Rule: Issuer Review of Assets in Offerings of Asset-Backed Securities

Dear Ms. Murphy:

This letter is the response of BDO USA, LLP to your request for comments regarding the proposal referred to above.

We support the Commission's efforts to improve the accuracy of information about the quality of asset-backed securities (ABS) by implementing Section 945 and a portion of Section 932 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Act). Our comments focus on the potential effects of the proposal on the due diligence services independent accountants typically perform in connection with ABS offerings.

We believe that the Commission should think of due diligence services in connection with ABS offerings in two categories for purposes of this rulemaking:

1. Services performed to validate information about the quality of the assets underlying the ABS, e.g., the credit quality
2. Services performed to validate other information, e.g., that information about a pool of assets stated in a prospectus is an accurate summarization of the information about the individual underlying assets as reflected in the issuer's records

Our principal concerns are:

- The Commission should exclude services other than those performed to validate information about asset quality from the scope of the rules under consideration. It should confirm and clearly communicate this exclusion in the adopting release and final rules.



- More needs to be done before the Commission will be in a position to adopt rules covering due diligence services performed to validate information about asset quality.

Validating Information about Matters Other Than Asset Quality

Section 945 of the Act requires an issuer of ABS to “perform a review of the assets underlying the asset-backed security.” We read Section 945 to be aimed at the first category of services listed above - validating information about asset quality. And based on the findings regarding credit ratings inaccuracy discussed in Section 931 and the context provided by other sections of the Act, we read the portion of Section 932 the Commission is addressing in this rulemaking to be aimed at this category of services as well. Based on the commentary and text of the proposed rules in the proposing release, it appears that the Commission is also focused on this category of services.¹ We hope that’s the case, because for the reasons discussed below, we think that’s the right approach.

The due diligence services accountants provide in connection with ABS offerings are typically performed in order to assist underwriters in developing a record of a reasonable investigation - not to assist issuers, underwriters or rating agencies in validating asset quality. They are of the second type described above - to provide assurance that information about a pool of assets stated in a prospectus is an accurate summarization of the information about the individual underlying assets as reflected in the issuer’s records.² Accordingly, when exceptions are found, our experience is that issuers always correct the disclosure in the prospectus except in cases where the exception is clearly immaterial. Since these services do not affect the accuracy of information about asset quality or provide other information that an investor might find useful, we don’t see any useful purpose in including them within the scope of the rules contained in the proposing release.

To the contrary, including these services within the scope of the rules could have a detrimental effect. The services accountants provide in connection with ABS offerings are typically provided pursuant to Section AU 634³ or AT 201⁴ of the auditing standards. In these engagements, underwriters tailor the services provided by the accountants to meet their needs, considering the circumstances and the other due diligence procedures they are performing. Since the underwriters determine the procedures to be performed, the accountants do not have a basis for and do not express an opinion. Rather, the accountants perform the specified procedures and report their findings. In addition, since the accountants are not in a position to make representations regarding the adequacy of the procedures followed, the adequacy of disclosure, or whether any

¹ We note in particular the title of proposed Rule 193: “Review of underlying assets in asset-backed securities transactions” (emphasis added).

² Such services generally do not encompass procedures aimed at validating information about credit quality, such as confirming that the underlying assets meet the underwriting criteria, validating borrowers’ income levels, or evaluating whether the loans have been originated in compliance with applicable laws.

³ *Letters for Underwriters and Certain Other Requesting Parties.*

⁴ *Agreed-Upon Procedures Engagements.*



material facts have been omitted, the report states that they do not do so. Because of the limitations on the scope of the work performed, the auditing standards consider the report to be not suitable for general use. Accordingly, the report is restricted to the use by only those parties who have agreed to and taken responsibility for the sufficiency of the procedures performed. Therefore, if filing reports not considered suitable for general use became required and/or accountants became subject to additional liability with respect to such reports, this action could make accountants unwilling to undertake such engagements and undermine underwriters' ability to perform appropriate due diligence.

Therefore, we believe it is appropriate to exclude services other than those performed to validate information about asset quality from the scope of the rules under consideration. However, we're concerned that the proposed rules do not clearly communicate this point. Accordingly, we ask the Commission to confirm and more clearly communicate this in the adopting release and final rules.

Validating Information about Asset Quality

The intent of the Act with respect to due diligence services performed to validate information about asset quality is less clear to us. It's not clear to us that the Act requires those performing such services to be subject to liability as experts, as proposed. One section of the remaining portion of Exchange Act Section 15E(s)(4) to be implemented in the future (Section 15E(s)(4)(C)) seems to require providers of due diligence services to meet a very high objective, requiring them to provide a certification "to ensure that [they] have conducted a thorough review of the ... relevant information necessary for a [rating agency] to provide an accurate rating," implying that the service provider has to decide how much work is sufficient (i.e., to decide what constitutes a "thorough" review and what information is "relevant"). In contrast, Section 15E(s)(4)(D) seems to envision the rating agency being the one who decides how much work is sufficient. It calls for a rating agency to simply disclose what was done and let the public decide whether it was adequate ("disclose the certification ... to the public in a manner that allows the public to determine the adequacy and level of due diligences services provided by a third party").

Therefore, we have the following recommendations with respect to rules covering due diligence services performed to validate information about asset quality:

1. Integrate this rulemaking with all the other rulemaking required by the Act. The Commission should not adopt these rules until it has had a chance to propose and evaluate comments on all other rules that will interrelate with these rules (such as those that will implement the portions of Section 15E(s)(4) noted above).
2. Don't adopt rules that could discourage service providers from performing limited-scope services. Given the heightened focus on the accuracy of credit ratings, rating agencies, issuers and underwriters may wish to engage service providers to perform limited scope engagements. The Commission's rules should encourage them to do this if they believe it will enhance the accuracy of credit ratings and other information about asset quality - not make it difficult because



service providers are reluctant to undertake such engagements due to concerns or uncertainty regarding liability.

In that regard, the Commission should clarify what it means to be subject to liability as an expert if a service provider performed procedures specified by a party requesting the service and reported the findings. Clarify that the service provider is not responsible for the adequacy of the procedures and that it is responsible only for the accuracy of the findings stated in its report.

3. Consider the need to work with auditing standards setters to address any conflicts between rules the Commission may adopt and auditing standards restricting the use of the reports. In that regard, give appropriate consideration to the reasons why the auditing standards have historically considered such reports to not be suitable for general use.
4. Expose any review standards before adopting them. The Commission indicates in the proposing release that it is considering the appropriateness of mandating a minimum level of review that must be performed on the pool of assets and/or the types of review procedures that should be performed. If the Commission decides to do this, proposing the standards for public comment before adopting them will provide the Commission with greater assurance that the standards will achieve their desired objectives and be operational.

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We appreciate this opportunity to express our views to the Commission. We would be pleased to answer any questions the Commission or its staff might have about our comments. Please contact Wendy Hambleton, National Director - SEC Practice, at (312) 616-4657 or via electronic mail at whambleton@bdo.com, or Wayne Kolins, National Director - Assurance Practice, at (212) 885-8595 or via electronic email at wkolins@bdo.com.

Very truly yours,

BDO USA, LLP