



August 5, 2011

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

Re: Docket Number OCC-2010-0002
Proposed Rule: Credit Risk Retention (Release No. 34-64148) Commission File No. S7-14-11

Dear Ms. Murphy:

The American Institute of Certified Public Accountants (AICPA) is pleased to comment on the above mentioned proposed rule that would implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act requiring regulators to establish requirements for securitizers to retain at least 5% of the credit risk of asset-backed securities (ABS).

The Auditing Standards Board (ASB) is the senior technical committee of the AICPA designated to issue auditing, attestation, and quality control standards applicable to the performance and issuance of audit and attestation reports for nonissuers. Its attestation standards include AT Section 201, *Agreed-Upon Procedures Engagements*, of Statements on Standards for Attestation Engagements (SSAE). Our comments on the proposed rule are limited to the agreed-upon procedures (AUP) report that a sponsor would be required to obtain from an independent public accounting firm (CPA) when using the representative sample option.

Selecting a random sample

The proposed rule provides for several different methods of meeting the 5% risk retention requirement. One of those methods is selecting a random sample that is representative of the assets transferred to the issuing entity and securitized. To ensure that the sample is a representative sample, the proposed rule requires that:

- the sample be constructed in accordance with the specified process identified in the proposed rule,
- the sponsor “have in place, and adhere to” specified policies and procedures identified in the proposed rule,
- prior to the sale of the ABS or after the sponsor’s policies and procedures change in any material respect, the sponsor obtain an AUP report from an independent public accounting firm regarding whether the sponsor has such policies and procedures,
- the sponsor disclose to potential investors that it has obtained an AUP report, and also disclose the policies and procedures it used to select the 5% sample,

- the sponsor assess whether the selected sample is representative of the ABS.

Question 57 in Section III (B)(5) of the proposing release to which commenters are asked to respond asks:

57(a). Is the condition that a sponsor obtain an agreed upon procedures report from an independent, public accounting firm appropriate? 57(b). If not, is there another mechanism that should be included in the option that helps ensure that the sponsor has constructed the representative sample in conformance with the requirements of the rule?

Agreed-upon procedures

In response to the first question, we do not believe that an AUP engagement is appropriate for achieving the objectives of regulators related to selecting a representative sample. Section 8(g) of the proposed common rules requires the sponsor to inform investors that it has obtained an AUP report and to disclose to such investors its policies and procedures related to the sample selection process. AT Section 201 requires that use of an AUP report be restricted to the parties who agreed upon the sufficiency of the procedures for their purposes (the specified parties). As such, investors would not be specified parties and therefore are not intended to be users of the reports pursuant to current professional standards. An AUP report includes language that alerts readers to the limitations of an AUP engagement, specifically, that the independent public accounting firm has not conducted an audit and does not express an opinion. Because investors would not be specified parties and, therefore, not have access to these reports, providing disclosures to investors without providing them with the related report would not provide investors with transparent information regarding the scope, nature and extent of agreed upon procedures performed and could result in investors inferring unwarranted assurance from the AUP engagement.

Sponsor's responsibilities

Section 8(c) of the proposed common rules indicates that the sponsor would be required to have "in place, and adhere to policies and procedures" designed to meet the specified objectives including construction of the representative sample in Section 8(b) of the proposed common rules. We believe that sponsors will need clarification regarding the meaning of the phrase "have in place, and adhere to" because those words may be interpreted to mean that the policies and procedures need only be implemented. Without a requirement that the policies and procedures be suitably designed and operating effectively to achieve the related objectives, there can be no assurance that this portion of the proposed rule will be effective.

CPA's responsibilities

Section 8(d) of the proposed common rules would require the CPA to, at a minimum, report on whether the sponsor "has" the policies and procedures mentioned in the proposed rule. The independent public accounting firm's responsibilities as described in the proposed rule are even more ambiguous than those of the sponsor. As drafted, there is no requirement for the independent public accounting firm to determine whether the policies and procedures have been implemented, are suitably designed, and operating

effectively, nor is there a requirement to test whether the selected sample is representative of the ABS. Accordingly, we believe the requirement to obtain an AUP, as drafted, would provide little benefit or protection to investors.

Other mechanisms

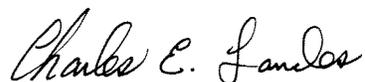
In response to the second question, we believe that if a CPA is to be involved in helping to ensure that the sponsor constructs the representative sample in accordance with the requirements of the proposed rule, the most effective way of doing so would be for the CPA to perform an examination engagement under AT Section 101, *Attest Engagements*, of the SSAEs in which the CPA reports on whether the policies and procedures identified in the rule were suitably designed and operating effectively. A prerequisite to performing such an engagement is the development of suitable criteria, as described in paragraphs 24-31 of AT Section 101, that enable the sponsor and the CPA to measure and evaluate the suitability of the design and operating effectiveness of the policies and procedures.

The disadvantages of such an engagement are that it could be costly and delay related ABS transaction activities. Moreover, we are not convinced that the involvement of a CPA is necessary. A possible alternative is to have a disinterested third party, such as a trustee or a qualified statistician select the sample. Although a determination by an outside party regarding whether the sample meets the requirements of the proposed rule could be made at the outset, we believe that the information in the post-securitization periodic reporting required by Section 8(g)(2) of the proposed common rules would enable investors to compare the performance of the sponsor's retained risk pool to the performance of the ABS securitization. Accordingly, we recommend that the representative sample approach not require the involvement of a CPA.

* * * * *

Thank you for the opportunity to comment on the proposed rule. If you have any questions regarding the comments in this letter, please contact Judith Sherinsky at +1-212-596-6031, jsherinsky@aicpa.org.

Respectfully submitted,



Charles E. Landes
Vice President, Professional Standards