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Securities and Exchange Commission
Office of the Secretary
100 F Street N.E.
Washington, D.C. 20549-1090

Re: Proposed Rules for Nationally Recognized Statistical Rating Organizations (Release No. 34-64515, File No. S7-18-11, May 18, 2011)

Deloitte & Touche LLP appreciates the opportunity to respond to the request for comments from the Securities and Exchange Commission (the "SEC" or the "Commission") on its Release No. 34-64514, *Proposed Rules for Nationally Recognized Statistical Rating Organizations* (File No. S7-18-11, May 18, 2011) (the "Release"); *see* 76 Fed. Reg. 33,420 (June 8, 2011).

The Release seeks comments on proposed regulations regarding credit rating agencies registered with the Commission as nationally recognized statistical rating organizations ("NRSROs"). These regulations stem largely from Section 932 of the Dodd-Frank Act ("Dodd-Frank"), Pub. L. No. 111-203 § 932, 124 Stat. 1376, 1872 (July 21, 2010), entitled "Enhanced Regulation, Accountability, and Transparency of Nationally Recognized Statistical Rating Organizations." While the proposed regulations would impose a number of requirements on NRSROs, our comments focus on the proposed requirements that arise under Section 932 that relate to third-party due diligence service providers. Section 932, among other things, requires the disclosure of information from third-party due diligence reports used to determine credit ratings. Section 932 also provides that the SEC shall prescribe the format of a certification that third-party due diligence service providers would need to submit to NRSROs that produce credit ratings for asset-backed securities.[1]

We support the goals of transparency and accountability underlying Section 932, but we believe it is essential that the Commission clarify certain aspects of the proposed rule applicable to third-party due diligence service providers in the following four key areas:

- First, the final rule should clarify that the regulations' disclosure and certification obligations only arise for third-party due diligence service providers who are engaged to provide "due diligence services" for an offering of a security and in contemplation of the rating of such security by an NRSRO. The final rule also should clarify the relationship between the responsibility of an issuer (and its third-party due diligence service providers) under Rule 193 and under the rules being currently proposed.

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[1] Dodd-Frank, § 932(s)(4).

- Second, the final rule should clarify the definition of "due diligence services" so that all parties clearly understand whether services contemplated to be performed are subject to the requirements of Section 932.

- Third, the circumstances in which, and the process by which, third-party due diligence service providers must submit certifications should be clarified, so that such providers can have a reasonable ability to comply with the certification requirement under Section 932. Relatedly, certain requirements of the form to be used for the certification by third-party due diligence service providers should be modified for the reasons discussed below.

- Finally, a reasonable transition period is necessary to allow NRSROs, issuers, and third-party due diligence service providers each adequate time to assess the applicability of the new requirements of the final rule to their businesses and to implement appropriate processes and procedures designed to comply with the new requirements.

I. Disclosures of Findings and Conclusions of Third-Party Due Diligence Service Providers

Under new proposed Rule 17g-7(a), an NRSRO would have to publish (1) whether and to what extent third-party due diligence services have been used by the NRSRO; (2) a description of the information that the third party reviewed in conducting due diligence services; and (3) a description of the findings and conclusions of that review.[2] This disclosure obligation is triggered when an NRSRO "tak[es] a rating action with respect to a credit rating assigned to an obligor, security, or money market instrument in a class of credit ratings for which the [NRSRO] is registered."[3]

Additionally, for rating actions taken with respect to a credit rating for any asset-backed security ("ABS" or "Exchange Act-ABS"), the NRSRO has to make publicly available any written certification received by an NRSRO, issuer, or underwriter from a third-party due diligence service provider with respect to the Exchange Act-ABS.[4] The proposed form of certification—Form ABS Due Diligence-15E—requires a description of the findings and conclusions of the third-party due diligence service provider as part of the due diligence services it performed.[5]

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2 *See* Proposed Rule 17g-7(a)(1)(ii)(F), 76 Fed. Reg. at 33,540.

3 *Id.* It is not clear whether the information that the NRSRO will be required to disclose under proposed Rule 17g-7(a)(I)(ii)(F) in relation to third-party due diligence services is limited to due diligence services used in rating actions for Exchange-Act ABS. Given the close relationship between these proposed requirements and those in proposed Rule 15Ga-2 and the definition of "due diligence services" in proposed Rule 17g-10, it would seem logical to modify the scope of the requirement in proposed Rule 17g-7(a)(I)(ii)(F) so that it is coextensive with these other two requirements and thereby ties the NRSROs' disclosure obligations to due diligence services used in rating Exchange-Act ABS.

4 *See* Proposed Rule 17g-7(a)(2), 76 Fed. Reg. at 33,541.

5 *See* 76 Fed. Reg. at 33,562-63.

If the NRSRO does not publish the findings and conclusions of the third-party due diligence service provider, then Proposed Rule 15Ga-2 would require an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS-15G on the EDGAR system. This proposed form, among other things, would require disclosure of the findings and conclusions of any third-party due diligence services obtained by the issuer or underwriter.[6]

We believe the Commission should address the following points to clarify the scope of these regulations and allow all potentially affected parties the ability to assess when these disclosure and certification requirements are triggered.

i. Third-Party Due Diligence Services Tied To Offering of Securities and Rating Action.

The Commission should modify the text of each of the proposed rules and forms to clarify that these requirements only are applicable to situations where a third-party is engaged by an issuer, underwriter, or NRSRO to provide due diligence services performed for an offering of a security and in contemplation of the rating of such security by an NRSRO. As the Release makes clear, this clarification is consistent with Congress's intent regarding the scope of Section 932. "[T]he Commission believes the scope of [the statute] is intended to address third-party due diligence reports obtained by issuers or underwriters from these specialized providers of due diligence services that are relevant to the determination of a credit rating for an Exchange Act-ABS by an NRSRO."[7] The Release also specifies that the definition of "due diligence services" is intended "to cover services provided by entities typically considered to be providers of third-party due diligence services in the securitization market," and it "does *not* intend to cover every type of person that might perform some type of diligence in the offering process." We agree with these statements in the Release, and thus urge the Commission to clarify that the final rules only cover third-party due diligence services that are performed for the offering of a security and in contemplation of the rating of such security by an NRSRO.

The proposed language in the rules could be read more broadly to cover ratings actions that are not related to the original offering of a security. For example, proposed Rule 17g-7 uses the phrase "when taking a rating action," and asks generally "[w]hether and to what extent third-party due diligence services were used."[8] The proposed definition of "rating action" is quite broad and includes "the publication of an expected or preliminary credit rating," along with "an upgrade or downgrade of an existing credit rating," a "placement of an existing credit rating on credit watch or review," "an affirmation of an existing credit rating," and "a withdrawal of an existing credit rating." As a result, the proposed text of Rule 17g-7 could be read such that the disclosure and certification obligations are triggered for all manner of services, including those that have only a tangential relationship to an original offering and rating action. For example, due diligence services provided for reasons unrelated to the issuance of securities could still be considered covered by the proposed rule if at any point in

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6 *Id.* at 33,545.

7 *Id.* at 33,472.

8 *Id.* at 33,540.

time—months or even years later—those assets happened to later make their way into an asset-backed security. This would be true even if the due diligence services were not considered relevant by the issuer, underwriter, or NRSRO at the time the due diligence service provider was engaged to perform or actually performed the services. Such a broad application of the proposed rule could make assets unsecuritizable in those circumstances where the issuer is unable to obtain the necessary certification from the third-party due diligence service provider at the time of the offering. Similarly, a third party that provides acquisition diligence services related to an asset transaction should not be subject to the final rule if the services are later considered by an issuer or NRSRO in connection with an offering or a rating action related to those assets. In this scenario, the services performed were intended for purposes of an acquisition, not an offering. Indeed, the third-party due diligence service provider may not have agreed to perform the services had they known that the services would later be subject to a certification requirement. To subject the third-party due diligence service provider to a certification requirement long after the fact is both unfair and unworkable.

This broad application of the rule could also have significant undesired consequences. For example, the information prepared by the third-party due diligence service provider could prove confusing or even misleading because it is outdated and may not have taken into account events or changes in the issuer or asset pool that may have occurred after the date of the third-party due diligence report. Similarly, the market conditions in which the due diligence service was provided may have changed dramatically, just as the standards pursuant to which the services were performed could also have changed. In addition, information from due diligence services performed for purposes other than an offering may prove misleading for NRSROs and the public; because it was prepared for a purpose other than the offering of securities and the rating action related thereto, the findings and conclusions contained in the due diligence services report may be out of context. Under the proposed rule, due diligence services provided by a third party could be subsequently subject to these new disclosure requirements months or even years after the service was provided, even though the service itself was not performed for the offering of a security and in contemplation of the rating of such security by an NRSRO. This would be contrary to the third-party due diligence service provider's expectations and obligations with respect to the services it performed, and could result in information about the services being misunderstood or mischaracterized.

Another potential difficulty with the proposed rule would be situations where due diligence reports or their findings and conclusions are incorporated within another report. It is unclear from the proposed rule whether the incorporated third-party due diligence information would trigger any disclosure or certification obligations.

Instead of increasing transparency and the ability of investors to access useful information relating to a rating action, requiring disclosures about third-party services which were not performed for the offering of a security and in contemplation of the rating of such security by an NRSRO may simply be too much disclosure and create a risk of obscuring third-party information that is critical to the offering. That information, when taken out of context, could also be confusing or misleading to investors. Additionally, if the rule is not clarified as suggested above, providers of third-party professional services will have to grapple with heightened risks associated with public disclosure about such services. A change in the risk profile for service offerings that extend beyond services performed in connection with an offering for the purposes of a rating action could limit the types of due diligence services that third-party due diligence service providers are willing to perform for NRSROs, issuers, and/or underwriters, and it could increase the cost of identifying and engaging third-party due diligence service providers to perform "due diligence services" under Section 932.

We believe the Commission can avoid these consequences by promulgating a final rule that addresses Congress's intent and clarifies that the rule covers only due diligence services performed for an offering of a security and in contemplation of the rating of such security by an NRSRO.

ii. Proposed Exceptions For AUP Engagements and Rule 193 Services.

First, we are concerned that the professional standards that govern certain services provided by the accounting profession may be in tension with the application of the proposed requirements. The range of services provided to issuers and underwriters includes, among others, agreed-upon procedures ("AUP") reports.[9] The standards under which AUP engagements are performed impose a number of specific requirements on the practitioner (service provider), the client, and other "specified parties." These include that the report is restricted to use by the client and other specified parties who, among other things, have agreed to the procedures performed and have taken responsibility for the sufficiency of those procedures for their own purposes; they best understand their own needs. Thus, an AUP report prepared for a client and other specified parties' specific, internal purposes is intended solely for the information and use of that client and other specified parties.

If findings from that report are used in an NRSRO rating action, full disclosure of the report's findings and conclusions may be contrary to the engagement agreement and professional standards. Further, as the professional standards recognize, the need for restriction on the use of an AUP report may be necessary to help ensure that the findings are not taken out of context and misunderstood. In particular, "[t]he need for restriction on the use of a report may result from a number of circumstances, including the purpose of the report, the criteria used in preparation of the subject matter, the extent to which the procedures performed are known or understood, and the potential for the report to be misunderstood when taken out of the context in which it was intended to be used."[10] Indeed, AUP reports, by their very nature, are not suitable for use by investors or any other persons or entities who have not agreed to the procedures performed and taken responsibility for the sufficiency of procedures for their purposes. Providing the findings and conclusions from these reports out of context could result in confusion, with investors inferring certain assurances from the findings and conclusions of an AUP report that may not be warranted. For these reasons, we urge the Commission to include an exception

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9 AUP engagements are performed in accordance with standards promulgated by the American Institute of Certified Public Accountants ("AICPA") as set forth in Statements on Standards for Attestation Engagements ("SSAE") Nos. 10 and 11. *See* AT Section 101 – Attest Engagements; AT Section 201 – Agreed-Upon Procedures Engagements. In these engagements, procedures are performed according to established criteria that are agreed to and deemed sufficient by parties specified in the engagement agreement (typically the issuer or the underwriter), such as comparing numerical disclosures in the prospectus to certain underlying data.

10 *See* AT Section 101 ¶ 79.

from the disclosure and certification requirements for AUP reports, so that issuers and underwriters may continue to obtain these services in this context.[11]

Second, as the Release notes, Rule 193 under the Securities Act of 1933 requires issuers to perform a review of the pool assets underlying an asset-backed security offering, and issuers may routinely hire third parties to conduct this due diligence review. Where this occurs, the NRSRO will have access to the findings and conclusions of the third-party due diligence service provider, and the issuer has to disclose those findings and conclusions in its prospectus. The disclosures required under Rule 193 about the findings and conclusions of third-party due diligence service providers will be substantially similar to the disclosures made about the same findings and conclusions in the context of the rules adopted under Section 932. Thus, the statutory objective embodied in Section 932 of achieving transparency with respect to the due diligence reports considered by the NRSRO will have been substantially fulfilled through the Rule 193 process. To enhance efficiency in this new regulatory framework, we encourage the Commission to include an exception such that where disclosures are made under Rule 193 with regard to third-party due diligence services, those same services will not be subject to the disclosure and certifications requirements of the final rule.

iii. Manner In Which NRSRO (Or Issuer/Underwriter) Should Be Required To Disclose Due Diligence Findings and Conclusions To Preserve Their Accuracy.

The Release asks how the findings and conclusions in the third-party due diligence report should be incorporated into the disclosure made by the NRSRO (or the issuer/underwriter). Given the specificity and precision with which due diligence reports are prepared, there is risk that the results of the due diligence service will be miscommunicated if the NRSRO (or the issuer/underwriter) does not explicitly restate the findings and conclusions from the report. The proposed rules could allow the NRSRO (or the issuer/underwriter) to pick and choose which portions of a due diligence report it desires to disclose and how it describes such portions from the due diligence report. This would run the risk that the third-party due diligence service provider's work may be mischaracterized or taken out of context.[12] Accordingly, we recommend that the final rule require that NRSROs expressly restate the specific findings and conclusions set forth in the report.

Separately, we support the approach taken in the proposed rule whereby issuers and underwriters are exempt from making disclosures about third-party due diligence service findings and conclusions on Form ABS-15G when the NRSRO using the third-party due diligence report represents to the issuer/underwriter that it will publish the required items under Rule 17g-7(a)—i.e., the provision requiring the NRSRO to disclose the findings and conclusions of the third-party due diligence service

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11 In the event an exclusion for AUP reports is not provided, the standards governing these engagements likely will need to be amended if issuers or underwriters desire to continue obtaining these services, and the ability to provide such services prior to such amendment may be limited.

12 This concern is particularly acute in those situations where a due diligence report, or portions of such a report, is incorporated in another due diligence report. Among other things, in these situations it may be unclear whether the services underlying the incorporated report fall within the scope of "due diligence services" and as a result, whether the NRSRO needs to disclose the findings and conclusions from the incorporated report.

provider and the certification of the third-party due diligence service provider. We agree that this approach should prove beneficial in reducing duplicative disclosures.

iv. Mechanism To Permit Compliance By Third-Party Due Diligence Service Provider.

The proposed rule provides that the relevant disclosures about third-party due diligence services and certifications are required *each* time an NRSRO takes a *rating action* with respect to a security. "A [NRSRO] must publish the items described . . . when taking a rating action with respect to a credit rating assigned to an obligor, security, or money market instrument in a class of credit ratings for which the [NRSRO] is registered."[13] The proposed rule defines a "rating action" to include "the publication of an expected or preliminary credit rating"; "an initial credit rating"; "an upgrade or downgrade of an existing credit rating"; "a placement of an existing credit rating on credit watch or review"; "an affirmation of an existing credit rating"; or "a withdrawal of an existing credit rating." This broad definition covers a variety of potential activities by the NRSRO that may trigger disclosure and certification obligations.

A third-party due diligence service provider may be unaware that an NRSRO plans to use the results of its due diligence services in relation to a particular rating action, especially if the final rule is not clarified as discussed in Section I.i above. The proposed rule does not provide a mechanism that guides how a third-party due diligence service provider is supposed to comply with the new requirements. Some third-party due diligence reports may be used by the NRSRO on multiple occasions, for multiple rating actions, by different NRSROs, and otherwise for purposes not contemplated by the third-party due diligence service provider. As a result, there is a serious risk that a third-party due diligence service provider would not be aware of the information it would need to comply with the new requirements (such as the identity of every NRSRO that might take a credit rating action). We believe the final rule should include a procedure (1) that requires the party that engages the third-party due diligence service provider ("the engaging party") to have the responsibility to obtain an appropriate Form ABS Due Diligence-15E from third-party due diligence providers at the time third party due diligence providers complete their work and (2) that requires the third party due diligence provider to render their report to the engaging party. The third-party due diligence service provider should then be able to rely on the engaging party to transmit the form to any NRSRO planning to use its report in connection with the rating action.

v. Third-Party Due Diligence Service Providers Should Not Have To Provide The Same Certification For Multiple Rating Actions.

The Release inquires whether certifications should only be required with the publication of an expected, preliminary, or initial credit rating, as opposed to with each subsequent rating for the same security.[14] We believe that the certification should be required only at the time of the offering, as it would help in clarifying the specific types of due diligence services that trigger the disclosure and

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13 Rule 17g-7(a), 76 Fed. Reg. at 33,540.

14 76 Fed. Reg. at 33,457.

certification requirements. Requiring certification only once is consistent with limiting the applicability of the rule to third-party due diligence services that are performed for an offering of a security and in contemplation of the rating of such security by an NRSRO. This interpretation of when the rule applies will streamline the process for all parties involved, reduce the burden on the disclosing and certifying entities, and help to ensure that investors are not overwhelmed with repetitive or unhelpful information.

Even if this approach is adopted, we are concerned that there could be situations where the NRSRO in taking its rating action relies on due diligence reports issued in connection with prior ratings actions, which under the proposed rule could trigger disclosure of outdated findings and conclusions or disclosure of due diligence services that were prepared for a different purpose. The final rule should make clear that in these situations the NRSRO should not have to re-publish the findings and conclusions of the due diligence report and re-obtain a certification from the third-party due diligence service provider. At a minimum, and instead of requiring new disclosures and certifications, the final rule should permit the NRSRO to disclose that it is relying on a report related to an earlier rating action and to reference back to the disclosures made with respect to the prior rating action. In this regard, the final Form ABS Due Diligence-15E should include in the certification a statement that the certification is as of the date signed and that the third-party due diligence service provider has no responsibility to update the report for events and circumstances (which may be material) occurring thereafter.

II. Definition of Due Diligence Services

The Release requests comment on whether the "proposed definition of 'due diligence services' provide[s] sufficient guidance" to those entities providing the services. Additionally, the Release asks whether each of the five categories included in the definition is "too broad or too narrow," and requests suggestions for how those categories can be refined.[15]

Consistent with the discussion in Section I above, we believe the proposed definition of "due diligence services" and its proposed application are too broad. Specifically, the proposed rule defines "due diligences services" as "a review of the assets underlying an asset-backed security. . . for the purpose of making findings with respect to" four specific categories of information surrounding the assets.[16] The definition also contains a "catch-all" provision, which expands the definition of due diligence services to include a review of "[a]ny other factor or characteristic of such assets that would be material to the likelihood that the issuer of the asset-backed security will pay interest and principal according to its terms and conditions."[17] It is essential that the definition of "due diligence services" link to services performed for an offering of a security and in contemplation of the rating of such security by an NRSRO. Third-party due diligence service providers issue reports to clients in a variety of settings and for many different purposes. We believe that for purposes of the final rule, services should qualify as "due diligence services" only when those services are performed for a specific offering of a

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15 *Id.* at 33,473-74.

16 *Id.* at 33,544.

17 *Id.*

security and in contemplation of the rating of such security by an NRSRO. Thus, we believe the Commission should modify the definition of "due diligences services" accordingly.

In addition, in order to balance the goal of transparency with the need for predictability on behalf of those entities that will be subject to the rule, we recommend that the Commission omit the "catch-all" category from the definition of due diligence services. Under this sweeping definition, NRSROs, issuers, underwriters, and third-party due diligence service providers likely would have difficulty determining when the obligations under Section 932 are triggered. Given the wide range of services that third parties provide in this area, a narrower, more predictable, and better understood definition is needed. This concern will be particularly pronounced if the final rule does not limit the application of the requirements to services performed for an offering of a security and in contemplation of the rating of such security by an NRSRO, as discussed above.

If the "catch-all" provision is not omitted, then at a minimum the final rule should limit the provision's application to other factors that materially impact the likelihood that *assets themselves* would pay interest and principal according to their terms and conditions. The focus of the diligence services will be on the assets themselves, not the *issuer's* ability to pay as is set forth in the proposed definition.

III. Certification Provided By Third-Party Due Diligence Service Provider

The proposed rule requires that for rating actions taken with respect to an Exchange Act-ABS, the NRSRO must publish any written certification received by an NRSRO, issuer, or underwriter from a third-party due diligence service provider with respect to the Exchange Act-ABS. The certification described would be provided using proposed Form ABS Due Diligence-15E.

Proposed Rule 17g-10 sets forth the form and content for the written certifications required of third-party due diligence service providers for services provided with respect to an offering of an Exchange Act-ABS. The provider of third-party due diligence services would need to provide to the NRSRO a certification on the proposed form. This new form must be signed by an authorized person from the third-party due diligence service provider; the individual signing the form would need to represent that the third-party due diligence service provider conducted a "thorough" review in performing the due diligence and that the statements contained in the form are "accurate in all significant respects." Proposed Form ABS Due Diligence-15E also would require the provider of the third-party due diligence services to describe the scope and manner of the due diligence performed (including a discussion of eight specific criteria), and the findings and conclusions resulting from the review.

The proposed Form ABS Due Diligence-15E contains several requirements that should be clarified in order to facilitate compliance and align the certification requirement with the underlying purposes of Section 932. Specifically, Item 3 of the proposed form requires the provider of third-party due diligence services to identify each NRSRO whose published criteria for performing due diligence the third party satisfied in performing its due diligence review. Thus, the third-party due diligence service provider is asked to represent whether it conducted the due diligence services in a manner that satisfied the due diligence requirements of one or more NRSROs. While issuers and third-party due diligence service providers may structure engagements so that the services are designed to comply with criteria published by a particular NRSRO, a third-party due diligence service provider will not necessarily be aware as to whether the services offered comply with additional criteria published by other NRSROs.

The third-party due diligence service provider could also condition its engagement on the issuer specifying the specific NRSRO-published criteria contemplated. Therefore, requiring this additional level of inquiry in all instances would be burdensome and impractical for issuers and third-party due diligence service providers. Thus, we believe this disclosure requirement should address only information in situations where the third-party due diligence service provider is expressly engaged by an NRSRO or issuer/underwriter to perform the services to comply with a particular set of NRSRO-published criteria.

Additionally, Item 4 of the proposed form requires the provider of third-party due diligence services to summarize the steps taken in performing the due diligence.[18] The instructions require that the third-party due diligence service provider describe: (1) the type of assets reviewed; (2) the sample size of the assets reviewed; (3) how the sample size was determined and, if applicable, computed; (4) whether the quality or integrity of the information or data provided, directly or indirectly, by the securitizer or originator of the assets was reviewed and, if so, how the review was conducted; (5) whether the origination of the assets conformed to, or deviated from, stated underwriting or credit extension criteria; (6) whether the value of the collateral securing such assets was reviewed and, if so, how the review was conducted; (7) whether the compliance of the originator of the assets with federal, state, and local laws and regulations was reviewed and, if so, how the review was conducted; and (8) any other type of review conducted with respect to the assets.

As an initial matter, the instructions for Item 4 of the proposed form should clarify that a third-party due diligence service provider only has to provide a response for those of the eight steps that relate to the services it actually performed, and that certain of the steps may not be applicable. Also, the last category of information required in the form (point 8)—requesting information regarding "any other type of review conducted with respect to the assets"—is so broad that it could be viewed to capture the interim steps and processes that lead to the creation of a due diligence report. Many of these steps could relate to considerations about confidential or proprietary information, or information for which disclosure may otherwise provide limited meaningful information. In fact, because these interim steps are often based on preliminary assumptions and incomplete information, the disclosure of such information could be misleading to investors. We therefore urge that the final form omit point 8.

Conversely, because there may be further information that is appropriate for the third-party due diligence service provider to convey, we believe the form should include an additional caption that gives the third-party due diligence service provider the discretion to describe additional information when warranted. It also would be helpful to provide examples for each of the categories on which the third-party due diligence service provider must report so that service providers can evaluate the anticipated scope of information needed to complete the form.

In addition, the form should make clear that after providing the certification form, a third-party due diligence service provider's obligations in that regard come to an end. It should be clear that the NRSRO (or the issuer or underwriter to the extent applicable) bears the responsibility for making any necessary public disclosures when it uses the information to which the certification relates. As noted above, the final form should contain a statement that the certification is as of the date signed and that

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[18] Form ABS Due Diligence-15E, 76 Fed. Reg. at 33,563.

the third-party due diligence service provider has no responsibility to update the report for events and circumstances (which may be material) occurring thereafter.

The certification provision of Form ABS Due Diligence-15E also requires that the individual signing the form represent that the third-party due diligence service provider conducted a "thorough review." This requirement stems from the statutory language which seeks to ensure that third-party due diligence service providers have "conducted a thorough review."[19] As it stands, the representation that the procedures described represent a "thorough review" does not provide a clear or meaningful standard for the third-party due diligence service provider, for issuers/underwriters, or for investors, because the meaning in this context of the word "thorough" is ambiguous. By their very nature, due diligence procedures often relate to a sample, rather than the entire population of assets, and in this sense the review may not be "thorough" as to the scope of assets reviewed. Similarly, the procedures themselves are limited in that choices were made to perform certain procedures and not others. We also have concerns that using the term "review" could lead to misunderstanding. A review is widely recognized in the context of financial statements as relying primarily on inquiries of management and analytical procedures, rather than the detailed procedures involved in due diligence services. Therefore, we believe it would be potentially misleading to characterize the procedures described in Item 4 as constituting a "thorough review." Instead, we believe the certification should state that the procedures described were conducted with "due care," which is an established standard applied by professionals providing due diligence services.

Finally, the statement in the proposed certification that the findings and conclusions are "accurate in all significant respects" could be misinterpreted as implying a level of assurance that is not actually provided by an AUP engagement or other due diligence services, and accordingly, we suggest omitting this statement from the certification.

IV. Effective Date

The Commission should use its discretion to allow for a reasonable transition period before any of the new rules proposed in the Release take effect. The rules at issue are complex and it will take significant time and effort to formulate and implement adequate procedures in order to comply with the disclosure and certification requirements. In particular, third-party due diligence service providers will need time to assess the applicability of the final requirements to various service offerings. In addition, because there are some rules and regulations stemming from Dodd-Frank that have yet to be proposed and finalized, many companies will need additional time to assess the overall impact of the various rules and regulations. For these reasons, we respectfully request that, for purposes of the disclosure and certification requirements related to third-party due diligence service providers, the final rule shall be effective for those due diligence services initiated on or after the one year anniversary of the publication of the final rule in the Federal Register.

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[19] § 932(s)(4)(C).

We would welcome an opportunity to discuss these matters with the Commission and its staff. If you have any questions or would like to discuss these matters further, please do not hesitate to contact Jim Mountain at (212) 436-4742 or Bill Platt at (203) 761-3755. We thank you for your consideration of these matters.

Very truly yours,

Deloitte & Touche LLP

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