FannieMae

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By E-Mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attn: Elizabeth M. Murphy, Secretary

Re: Release Nos. 34-64514; File No. S7-18-11
Comment Letter – Proposed Rules for Nationally Recognized Statistical Rating Organizations

Ladies and Gentlemen:

The Federal National Mortgage Association ("Fannie Mae") is submitting this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding Release Nos. 34-64514; File No. S7-18-11, dated June 8, 2011 (the "Proposing Release"), relating to nationally recognized statistical rating organizations (each, an "NRSRO") and third-party due diligence reports obtained by issuers or underwriters with respect to asset-backed securities ("ABS"). Fannie Mae appreciates the opportunity to comment on the Proposing Release.

I. Introduction

The Commission has issued the Proposing Release in accordance with various sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). The Proposing Release proposes several new rules related to NRSROs. In particular, the Proposing Release includes a proposed rule (the "Current Proposal") that would require an issuer of NRSRO-rated ABS to disclose on SEC Form ABS-15G any third-party due diligence report that it may have obtained with respect to the assets backing the related issuance.[1] In its request for comments, the Commission has specifically asked if it is appropriate to limit such disclosure to NRSRO-rated securities.

This proposal is the successor to SEC Release Nos. 33-9150 and 34-63091, issued in October 2010, wherein the Commission proposed, *inter alia*, to require issuers and underwriters of any ABS (whether NRSRO-rated or not) to file SEC Form ABS-15G containing the findings and conclusions of any report of any third party engaged for

[1] The Proposing Release also proposes new rules that would (i) require NRSROs to make disclosure with respect to their internal controls and the performance of their credit ratings and (ii) establish professional standards for credit analysts and protect against conflicts of interest for NRSROs. Since Fannie Mae securities ordinarily are not rated, Fannie Mae will not be commenting on such proposals.

purposes of performing a review of the pool assets obtained by the issuer or underwriter, respectively (the "Original Proposal"). Fannie Mae filed a comment letter, dated November 15, 2010 (the "Original Comment Letter"), recommending that both Fannie Mae and the underwriters of Fannie Mae Securities (as defined below) should be exempt from such regulation. On January 20, 2011, the Commission issued a final rule, effective March 28, 2011, which did not include the Original Proposal. At that time, the Commission stated that it intended to reconsider the question of third-party due diligence for unregistered issuances of asset-backed securities. The Current Proposal, which Fannie Mae writes to endorse, is the product of such reconsideration.

A. Securities Issued

The Original Comment Letter described the salient details of Fannie Mae's securitization business, which differs in many respects from private-label securitization. For your convenience, we will repeat that description herein.

Fannie Mae's primary securitization activity is effected through guarantor swaps, in which a seller (which is not necessarily the originator) of single-family or multifamily residential mortgage loans sells mortgage loans owned by it to Fannie Mae in return for a mortgage-backed security ("MBS") backed by those loans. The seller may retain the MBS or sell them in the open market. Multiple sellers can also sell mortgage loans to Fannie Mae in return for an undivided interest in an MBS backed by mortgage loans sold to Fannie Mae by multiple sellers. Fannie Mae may also purchase mortgage loans for cash from sellers and later form an MBS. Monthly payments of principal and interest on MBS are funded by passing through to MBS holders the cash flow provided by the underlying mortgage loans. Generally, the mortgage loans are pooled in a pass-through trust relating to each MBS. Fannie Mae is the trustee of the trust.

Fannie Mae also aggregates MBS into pools and issues securities backed by such MBS. Such securities may be either a mere aggregation of such securities ("Mega Securities") or a strip of such securities into interest-only and principal-only cash flows ("Stripped MBS"). Fannie Mae is the trustee of the trust related to the Mega Securities and Stripped MBS.

Fannie Mae also engages in resecuritization transactions in which MBS back multiclass time-tranched securities ("REMIC Securities") issued through a trust that qualifies as a real estate mortgage investment conduit for federal income tax purposes. In turn, REMIC Securities can also back other "Re-REMIC Securities." Fannie Mae is the trustee of the trust related to the REMIC Securities.

In addition, Fannie Mae can purchase private-label ABS issued by unaffiliated third parties, resecuritize those ABS and issue new securities backed by those ABS. The residential single-family and multifamily mortgage loans that back the ABS purchased by Fannie Mae may also back ABS that have not been purchased by Fannie Mae but that are issued by the same trust that issued the ABS purchased by Fannie Mae. The third-party ABS that are resecuritized by Fannie Mae are placed in a trust of which the trustee is either Fannie Mae or a third-party independent trustee.

The securities described above (the "Fannie Mae Securities") differ from those in the registered ABS market insofar as Fannie Mae generally guarantees payments of principal and interest thereon.[2] Issuers of private-label securities generally do not guarantee their own ABS.

B. Fannie Mae's Pre-Issuance Due Diligence

In general, the level of Fannie Mae's pre-issuance due diligence depends on the channel through which it acquires mortgage loans. There are four major channels: (i) single-family "flow" acquisitions (i.e., acquisitions pursuant to a contract whereby lenders agree to deliver and Fannie Mae agrees to accept mortgage loans relatively soon after such mortgage loans are originated); (ii) single-family "bulk" transactions (i.e., acquisitions of a defined pool of already existing mortgage loans); (iii) multifamily "flow" acquisitions; and (iv) multifamily "bulk" transactions. Fannie Mae also acquires MBS and other securities for re-securitization through its Capital Markets channel.

In the case of single-family and multifamily "flow" acquisitions (as well as Capital Markets acquisitions), Fannie Mae currently performs very limited "in-house" pre-issuance due diligence, but relies primarily on seller representations and warranties. The lender will perform its own underwriting of the loans in order to allow it to make its representations. This underwriting invariably includes obtaining reports from third parties, whether they are credit reports, appraisals, title searches, termite inspections or other reports from third-party vendors. Fannie Mae does engage in some post-purchase reviews of such mortgage loans.

Single-family "bulk" transactions normally follow the same procedure, although Fannie Mae will, from time to time, engage a third party either to perform a review of the mortgage loans to facilitate a delivery or simply to collect data and deliver such data to Fannie Mae. Alternatively, the mortgage seller may itself engage a third party to perform such a review and provide comfort to the seller as it makes its representations and warranties to Fannie Mae.

Fannie Mae routinely engages a third-party due diligence firm to review the loans in a multifamily "bulk" transaction. Using a complete credit and legal loan file, the third-party firm will verify all data elements needed for disclosure. Additionally, a sample of the mortgage loans in the transaction will be selected for credit and legal due diligence to be conducted by the third-party firm.

II. Discussion

A. The Current Proposal Appropriately Excludes Fannie Mae Securities from Its Requirements.

As added by Section 932 of the Dodd-Frank Act, Section 15E(s)(4)(A) of the Exchange Act, which requires issuers and underwriters to make the findings and conclusions of

[2] The structures of ABS issued by the Federal Home Loan Mortgage Corporation ("Freddie Mac") are similar to those of Fannie Mae.

third-party due diligence reports publicly available, is "aimed at improving the quality of information received by ratings agencies issuing ratings on asset-backed securities in registered and unregistered offerings."[3] Because Fannie Mae Securities are not rated by agencies, we believe the Current Proposal appropriately excludes Fannie Mae Securities and implements Congressional intent regarding Fannie Mae Securities.

B. The Current Proposal Not to Apply This Regulation to Unrated ABS Will Allow Lenders to Continue to Rely on Forward Commitments to Offer Interest Rate Locks to Borrowers.

The secondary mortgage market routinely trades many single-family MBS on a TBA ("To Be Announced") basis. Lenders enter into forward commitments to sell MBS to buyers. At the date of the forward commitment, the MBS has frequently not yet been formed (and the mortgage loans backing them frequently have not yet been originated), and the commitment describes the basic parameters that must be met in order for the MBS to constitute a good delivery. Such commitments are usually completed within 30-90 days after the date the commitment is entered into.

Once a forward commitment is in place, a lender is able to "lock in" the interest rate that it offers to prospective borrowers, since the lender has a third-party commitment to buy MBS at a particular interest rate. Such process is a low-cost, efficient method of locking interest rates, is critical to the mortgage finance system, and has been well-accepted by MBS investors for many years.

The Original Proposal would have rendered this method of locking interest rates unworkable, because both issuers and underwriters would have been required to file SEC Form ABS-15G five business days prior to any "sale" of the securities, thus making such forward commitments impossible. By contrast, the Current Proposal does not impact forward commitments related to unrated securities, thus allowing this method of locking interest rates to continue.

C. The Current Proposal Will Help Small- and Medium-Sized Lenders to Participate in the Residential Mortgage Industry.

By excluding unrated ABS from the purview of the Current Proposal, the Commission protects small- and medium-sized mortgage lenders who, if the Current Proposal applied to unrated ABS, would have difficulty complying with its terms. The typical MBS transaction in which Fannie Mae engages involves a swap of mortgage loans with a mortgage seller in exchange for MBS. The mortgage seller will frequently sell such MBS in the secondary market. In this role, such mortgage sellers could be viewed as "underwriters" under the securities laws, since the term "underwriter" is defined in the Securities Act as "any person who has purchased from an issuer with a view to, or offers or sells for an issuer with, the distribution of any security . . ." Many of these sellers are small and medium-sized lenders who are unaccustomed to making SEC filings. If the Current Proposal were to apply to unrated ABS, the costs and difficulty associated with

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[3] Issuer Review of Assets in Offerings of Asset-Backed Securities, 75 Fed. Reg. 64182, 64193 (October 19, 2010).

such filings would impede the ability of these lenders to access the secondary mortgage market, thus making it more difficult for them to compete with larger lenders.

III. Conclusion

As discussed above, Fannie Mae endorses the Current Proposal. Application of the Current Proposal to Fannie Mae would not have attained the purpose for which Congress enacted the relevant provisions of the Dodd-Frank Act, and would have placed an impediment in the way of an efficient method of locking interest rates for prospective borrowers and making mortgage funding available for prospective borrowers.

Fannie Mae very much appreciates the opportunity to provide the foregoing comments to the Commission. Should you have any questions or wish to clarify any of the matters addressed in this letter, please do not hesitate to contact David E. Kalinski, Associate General Counsel, at (202) 752-3417 or david_e_kalinski@fanniemae.com.

Sincerely,

Anne S. McCulloch
Senior Vice President and Deputy General Counsel