August 8, 2011

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rules for Nationally Recognized Statistical Rating Organizations--File Number S7-18-11

Ladies and Gentlemen:

PricewaterhouseCoopers LLP ("PwC") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or the "Commission") Proposed Rules for Nationally Recognized Statistical Rating Organizations (the "Proposal").[1] PwC is a registered public accounting firm that provides assurance, tax and advisory services. PwC often performs agreed-upon procedures ("AUPs") with respect to certain contents of offering documents relating to issuances of asset-backed securities ("ABS").

Our comments are focused on those aspects of the Proposal that relate to third-party due diligence services used by nationally recognized statistical rating organizations (NRSROs) in their rating process.

The Proposal implements the requirements of Sections 15E(s)(1)-(4) of the Securities Exchange Act, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The Proposal addresses third-party due diligence services in several respects:

- Proposed Rule 17g-7(a)(1) requires NRSROs to disclose certain information when taking a rating action, including with respect to third-party due diligence services used by the NRSRO in subparagraph (a)(1)(ii)(F).

- Proposed Rule 15Ga-2 requires the issuer or underwriter of an offering of ABS to furnish Form ABS-15G, if the security is to be rated by an NRSRO, unless the issuer or underwriter receives a representation from the NRSRO that the information will be disclosed in the NRSRO's information disclosure under Rule 17g-7(a)(1).

- Proposed Rule 17g-10 implements the "self executing" certification requirement of Section 15E(s)(4)(B) of the Exchange Act. It requires that in any case in which third-party due diligence services are employed by a rating agency, issuer or

[1] Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-64514 (May 18, 2011) ("Release").

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underwriter, in connection with an ABS offering, the person providing the due diligence services shall provide a written certification to any NRSRO that produces a rating to which those services relate. The certification must be on Form ABS Due Diligence 15E. As proposed by the Commission, this Form would include specified information about the scope and nature of the due diligence services performed and the provider's findings and conclusions. The provider would be required to represent that it had conducted a "thorough review" and that the statements in the Form are "accurate in all significant respects."

- Proposed Rule 17g-7(a)(2) requires an NRSRO to include in its information disclosures any due diligence certification it receives.

PwC respectfully requests that the Commission clarify that these rules do not apply to accountants' AUPs because (i) the AUPs are not "due diligence services" as defined in the Release; (ii) accountants' AUPs were not historically addressed to NRSROs during the rating process and as such should not be considered relevant to the ratings published by NRSROs; (iii) the disclosure of accountants' AUPs would not enhance the information available to investors; and (iv) AICPA professional standards limit the use of AUPs to specified parties and are not publicly disclosed. PwC also respectfully requests that the Commission clarify that proposed Rule 17g-7(a)(1)(ii)(F) applies only to ratings of ABS.

I. The Commission should clarify that the due diligence services rules do not apply to accountants' AUPs.

The Proposal would impose on providers of due diligence services in connection with ABS offerings significant obligations and potential liabilities. As a consequence, it is critical that all market participants have a clear understanding of what activities trigger the applicability of the due diligence services rules. As discussed below, we believe it is well-understood by market participants and the NRSROs that AUPs are not "due diligence services," and that determination is consistent with the intent of the Commission as expressed in the Release and the applicable professional standards. We recommend that the rules be clarified to expressly reflect that intent. Absent such clarification, issuers, underwriters, accountants and rating agencies will be subject to significant uncertainty about the scope of accountants' disclosure obligations. This would be precisely the result the Commission seeks to avoid by providing further definition of due diligence services.[2]

a. Accountants' AUPs are not "due diligence services."

Proposed Rule 17g-10(c)(1) defines "due diligence services" for purposes of Rules 15Ga-2 and 17g-10 and Form ABS Due Diligence 15E. In the proposing Release, the Commission makes clear that it intends the definition to only cover "services provided by entities typically considered to be providers of third-party due diligence services in the securitization market and does not intend it to cover every type of person that might perform some type of diligence in the

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[2] See Release at 198 ("In addition, a definition could help avoid overly broad interpretations of the meaning of 'due diligence services' that cause entities not providing due diligence servicers to needlessly provide certifications to NRSROs.").

offering process."[3] In our experience, AUPs are not viewed as "due diligence services" as that term is understood in the securitization market, and accountants that provide AUPs are not considered to be due diligence providers for ABS offerings. Typically, underwriters of ABS obtain an AUP letter from an accounting firm addressing numerical information in the prospectus. Even though an AUP letter is not an audit, it is an important part of establishing the underwriter's defense under Section 11(b)(3)(A) of the Securities Act.

PwC and other participants in the securitization markets previously discussed AUPs in connection with the Commission's 2010 proposal on Issuer Review of Assets in Offerings of Asset Backed Securities.[4] As explained at that time, accountants perform AUPs in connection with ABS offerings pursuant to American Institute of Certified Public Accountants Statements on Standards for Attestation Engagements, AT Section 201, *Agreed-Upon Procedures Engagements.* In the context of ABS offerings, these services include procedures performed on information included in the offering document in four general areas: (i) comparing data tape to the loan file; (ii) recalculating projected future cash flow in respect of financial modeling disclosures; (iii) checking the mathematical accuracy of other information included in the offering document; and (iv) comparing the accuracy of pool assets disclosures based on issuer and due diligence firm data.

Together, the services typically consist of agreeing information in the offering document back to the source data or recalculating to check accuracy. In other words, the activities do not involve evaluating the quality of the assets underlying the securities, but rather procedures over the accuracy of the offering document to the underlying information developed by the issuers and underwriters.

Accountants have historically performed AUPs to provide comfort to issuers or underwriters with respect to the accuracy of numerical information contained in the offering document, and to support the underwriters' defense under Section 11(b)(3)(A) of the Securities Act. In this regard, accountants' AUPs serve a purpose similar to that of the traditional "comfort letter" in underwritten public offerings of other types of securities. AUPs do not involve any review or assessment of, or findings or conclusions about, the characteristics or quality of the underlying assets in the pool; rather, they simply describe the procedures performed that address whether numerical information disclosed in the offering documents is accurate and the resulting findings.

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[3] Release at 198 and 204 (SEC "understands that 'provider of third-party due diligence services' is a phrase used as a term of art in the securitization market, and the proposed rules are intended to apply to those entities that are commonly identified by that term.").

[4] *See* Issuer Review of Assets in Offerings of Asset-Backed Securities, Securities Act Release No. 33-9150, Exchange Act Release No. 34-63091 (Oct. 13, 2010). The Commission originally proposed rules to implement both Section 7(d) of the Securities Act, added by Section 945 of Dodd-Frank, and Section 15E(s)(4)(A) of the Exchange Act, added by Section 932 of Dodd-Frank. The Commission's final rules addressed only the issuer due diligence disclosure requirement of Section 7(d).

AUPs do not contain and do not provide issuers or underwriters any information with which to gauge the credit quality of the assets underlying the ABS.[5]

We believe this view is consistent with the Commission's intent in the Proposal. For example, the Commission indicates in the Release (at 195, 199) that proposed Rule 17g-10(c)(1)(i) covers a comparison of loan-tape information in a loan sample to the hard-copy documents in the actual loan file. AUPs in most cases do not involve comparisons of loan-tape to underlying hard copy documents, but rather comparing the offering document data as transferred from the loan-tape from which it is derived. The AUPs which do include procedures to compare loan-tape data to underlying hard copy documents are not designed to assess the accuracy of the loan file, its completeness, or its compliance with any laws or standards at origination but rather merely to identify data errors inherent in transferring data from the loan file to the loan tape, or the related system.

Similarly, recalculation procedures performed in the context of the accountant's AUP report are unrelated to work performed in relation to asset valuation which is covered by Rule 17g-10(c)(iii). Recalculation may involve procedures related to cash flow projections or model verification based on given assumptions. Those are not pool asset reviews or use of "a valuation model if the reviewer believes that the original appraised value of the property is less than the value presented by the originator." (Release at 201).

Finally, accountants may perform procedures directed at collateral stratification validation with regard to published marketing material and other offering documents. The AUP report describes the procedures and findings with respect to the published material accuracy based on a given asset data tape. This work is outside of the scope of the proposed Rule 17g-10 and fulfill the underwriter obligation under the Securities Act 11(b)(3)(A) related to the accuracy of the offering documents numerical presentation.

We request that the Commission clarify that procedures related to data verification or recalculation applied to the disclosures in the offering document do not meet the definition of "due diligence services" for purposes of Rule 17g-10.

b. **Accountants' AUPs letters are not relevant to the ratings of NRSROs.**

The Release makes clear that Section 15E(s)(4) of the Exchange Act and proposed Rules 15Ga-2 and 17g-10 only cover reports by providers of due diligence services that are relevant to the

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[5] Although the Commission did not adopt an explicit exclusion for AUP reports with respect to the review required to be performed by the issuer pursuant to Rule 193, the Release acknowledges that the "due diligence services" referenced by this Proposal are different -- and narrower -- than the broader concept of the review of the assets required under Section 7(d) of the Securities Act and Rule 193. *See* Release at 186 ("the Commission believes that the third-party due diligence reports referenced in Section 15(E)(s)(4) of the Exchange Act are not the same as the review required by Section 7(d) of the Securities Act and Rule 193. Instead, Section 15(E)(s)(4) of the Exchange Act and, consequently, proposed rule 15Ga-2 related to a particular type of report that is relevant to the determination of a credit rating by an NRSRO. By contrast, Section 7(d) of the Securities Act and Rule 193 relate to a more general concept of an issuer review of the assets underlying an Exchange Act-ABS, one aspect of which may (or may not) include a third-party due diligence report.").

determination of a credit rating by an NRSRO.[6] Prior to 2011, ratings agencies rarely sought access to accountants' AUPs. We believe AUPs do not provide NRSROs with any additional information with which to gauge the credit quality of the assets underlying the ABS. Chronologically, the AUP report procedures are typically performed after due diligence work is completed by an external firm. Furthermore, the accountant's AUP report is typically provided on the closing date of the transaction which is usually after a rating has been assigned by an NRSRO. Indeed, the accountant's AUP engagement is not with the NRSRO (it is with the issuer or underwriter), the procedures performed are not designed for rating agency's use (they are designed and agreed to by the issuer or underwriter), and the resulting report is not intended to be used or distributed to the rating agency -- or any other third party. *See* Section I(d) below. Accordingly, NRSROs do not need the accountant's AUPs to support their ratings nor do investors need access to AUPs to assess the quality of the assets in the ABS or the reliability of the rating. The Commission should clarify that accountants' AUPs are not relevant to the rating, and therefore that the requirements of Rules 15Ga-2 and 17g-10 do not apply. At a minimum, the Commission should clarify that if the accountant restricts its report to use by the issuer and/or underwriter, and does not permit distribution to the NRSRO, that such report cannot be deemed relevant to the credit rating, and therefore the certification requirements of Rule 17g-10 would not apply.

c. Disclosure of AUPs would not enhance the information available to investors.

Proposed Rules 17g-7(a)(1)(ii)(F) and 15Ga-2 would require disclosure to investors about third-party due diligence services, either directly by the issuer or through incorporation into the NRSRO's information disclosure form. Disclosure of AUPs or the procedures and findings of AUPs is not necessary to achieve the objectives of these rules, because the AUPs would not help investors better assess the quality of an ABS offering. The numerical information contained in the offering documents, which is derived from underlying data regarding the assets in the pool, is the issuer's information and the issuer is responsible for the accuracy of this information. The AUPs assist issuers and the underwriters through performance of procedures directed at the accuracy of certain numbers included in the offering document. They are not a "thorough review" of the pool assets themselves. The investors, in turn, rely on the issuer's representations in the offering document. Disclosing to investors that an accountant has applied certain procedures to this information does not enhance their ability to qualitatively evaluate a particular offering.

Moreover, disclosing information about the accountants' AUPs could be confusing to investors. Under AT Section 201, accountants agree with issuers and/or underwriters upon the procedures to be performed to assist those parties in satisfying their obligations under the securities laws. As made clear in the customary text of an AUP report, accountants do not verify the accuracy or completeness of the underlying data, or make any representation as to the sufficiency of the procedures. The accountant does not express any opinion on the underlying information subject to the AUPs. The AUP report contains language illustrating that the sufficiency of the procedures performed is solely the responsibility of the addressees of the report, that other matters might have come to the attention of the accountants had they performed additional

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[6] Release at 186 and 201-202. Proposed Rule 15Ga-2, relating to issuer disclosures of third-party due diligence reports, and Rule 17g-10, relating to third-party provider certifications, are limited to ABS securities that are to be rated by an NRSRO.

procedures and that the report is intended solely for the specified parties who agreed to the procedures. If AUPs were made available to investors, the investors might not appreciate the effect of the limited purpose and scope of the AUP and instead draw unwarranted conclusions that an accounting firm had attested to matters relating to the quality of the underlying assets. AT Section 201 further provides that even with respect to these specified parties for whom the report is intended, they "assume the risk that such procedures might be insufficient for their purposes" and "assume the risk that they might misunderstand or otherwise inappropriate use findings" in the report[7].

d. Accountants are not permitted by AICPA professional standards to agree to public distribution of AUP reports.

As discussed above, AUPs are not general distribution reports, but rather are restricted to the use of the parties who have agreed to the sufficiency of the procedures performed for their own purposes – so-called "specified parties." *See* AT Section 201.04 ("a practitioner's report should clearly indicate that its use is restricted to those specified parties"). If the final rule does not make the clarifications sought above, accountants would not be permitted by our professional standards to issue an AUP for which it is expected to be used by others than the specified parties. Hence, no AUP would likely be issued in conjunction with securitizations. This would negatively impact issuers, underwriters and, consequently, borrowers in the secondary credit markets. The possible alternative of an engagement and report which is suitable for public distribution would be a much more time consuming and expensive attestation examination engagement. We have been informed by market participants that they would seek alternatives in order to avoid the cost involved with an examination engagement, and the potential delay in bringing a deal to market.

II. The Commission should clarify that proposed Rule 17g-7(a)(1)(ii)(F) applies only to ratings of ABS

Proposed Rule 17g-7(a)(1)(ii)(F) requires that the information disclosed in an NRSRO's information disclosure form contain information about whether and to what extent the NRSRO used third-party due diligence services, as well as a description of information the third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party. Unlike the other proposed due diligence services rules, this proposed Rule is not expressly limited to due diligence services used in rating ABS offerings. PwC submits that the proposed Rule should be clarified to expressly limit it to ABS offerings. This will avoid confusion about whether due diligence services that third parties may provide in connection with issuances of rated, non-ABS securities would be covered by the NRSRO rules.

Logically, the scope of Rule 17g-7(a)(1)(ii)(F) should be coextensive with Rules 15Ga-2 and 17g-10, which also deal with due diligence services and are limited to ABS offerings. These three rules are intertrelated: Under Rule 15Ga-2, the issuer's obligation to provide disclosures about due diligence reports in ABS offerings is suspended if the NRSRO provides the information under Rule 17g-7(a)(1)(ii)(F). Similarly, Rule 17g-7(a)(2) incorporates the certifications provided by due diligence providers in connection with ABS offerings under Rule

[7] AT Section 201.11

17g-10. There is no indication that Congress, in prescribing the form of NRSRO disclosures, intended to give a broader scope to the term "third-party due diligence services" covered in Section 15E(s)(3)(v)—the source of Rule 17g-7(a)(1)(ii)(F)—than it did to the same term in Section 15E(s)(4). The Commission's commentary on proposed Rule 17g-7(a)(1)(ii)(F) also ties that rule to Section 15E(s)(4) and the rules thereunder. Release at 154-155.

We believe this issue could be simply solved by having Rule 17(a)(1)(ii)(F) incorporate the definition of "due diligence services" in proposed Rule 17g-10(c)(1).

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We are available to discuss our comments and to answer any questions that the SEC staff may have. Please contact Derrick Stiebler at 973-236-4904 regarding our submission.

Sincerely,

PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP

cc:

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