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

**SEC Release No. 34-64514; File No. S7-18-11**

***Proposed Rules for Nationally Recognized Statistical Rating Organizations***

Dear Ms. Murphy:

We appreciate the opportunity to respond to the Securities and Exchange Commission's (SEC or Commission) proposed rules (the Proposal or the Proposed Rules) that would apply to credit rating agencies registered with the Commission as nationally recognized statistical rating organizations (NRSROs), providers of third-party due diligence services for asset-backed securities, and issuers and underwriters of asset-backed securities. We support the SEC's continued regulatory efforts to increase the confidence in, and transparency of, the securities markets.

This letter focuses on the aspects of the Proposal that are directed at providers of third-party due diligence services for asset-backed securitizations (ABS). Specifically, we provide some relevant background related to the Proposal and certain historical agreed-upon procedure (AUP) services traditionally provided by independent public accounting firms. Next, we discuss why we believe these AUP services are not within the scope of due diligence services as defined by the Proposal and request the Commission clarify its definition. Finally, we suggest continued dialogue if the SEC does not agree with our assessment that AUP services are outside the scope of the Proposed Rules.

**Background**

*Proposed Rules:* The amended Section 15E(s)(4) of the Securities and Exchange Act of 1934 (the Exchange Act) requires the issuer or underwriter to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter. In addition, this section requires that in any case in which third-party due diligence services are used by an NRSRO, an issuer, or an underwriter, the person or entity providing the due diligence services shall provide to any NRSRO that produces a rating to which such services relate, written



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certification in a format as provided by the Proposal. Our comments and observations concentrate on these provisions of the Proposed Rules.

*AUP Services:* Independent public accounting firms are often engaged by issuers to perform certain procedures associated with the accuracy of information included in offering documents related to ABS and report their findings to the issuer and underwriter. These procedures typically consist of agreeing information back to source documents that provide the foundation for disclosures in the offering documents (e.g., 1 - comparing attributes for a sample of loans to information on the loan tape that is used to generate the asset disclosures, and 2 - comparing loss, delinquency and static pool information), or recalculating the information included in those disclosures for accuracy (e.g., recalculation of weighted average lives, collateral tables and quality tests, and estimated cash flows due to the various security classes).

### **Due Diligence Definition**

*Proposed Rules' Due Diligence Definition:* The Proposed Rule states that “the Commission intends the definition of “due diligence services” in the Exchange Act-ABS context to 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 offering process. As discussed below, the Commission believes that the scope of Section 15E(s)(4)(A) 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.”

*Why AUP Services Should Not Be Considered Due Diligence Under the Proposal:* We do not believe the AUP services described above meet the definition of a due diligence service under the Proposal for the following reasons:

- AUP services' objective is not to assist in credit quality evaluations: Like traditional comfort letters, the agreed-upon procedures prescribed by the underwriter or issuer are designed solely for the limited purpose of providing the underwriter or issuer with evidence to support the discharge of their responsibilities under the Securities Act of 1933 (the Securities Act) about the accuracy of disclosures in the ABS offering document. These reports are not designed to assist in the evaluation of the credit quality of the assets underlying the ABS.

The procedures performed as part of an AUP service do not include verifying information contained within the source documents (e.g., verifying information related to income levels in mortgage loan documents to income tax records or W-2s) or providing any evaluation or assurance regarding the credit quality of the underlying assets, adherence to underwriting standards or compliance of the credit origination with applicable laws and regulations. Traditionally, independent public accountants have not been engaged to



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perform these types of procedures which relate to the credit quality of specific assets underlying ABS.

We believe that providing potential investors with additional information with which to evaluate the credit quality of the assets underlying the ABS and used by the NRSRO in the rating process is consistent with the intent of the Exchange Act. However, procedures performed for that purpose are distinct from procedures performed for the purpose of supporting a due diligence defense under Section 11 and Section 12(a)(2) of the Securities Act with respect to disclosures in the registration statement and prospectus, which is the focus of the independent accountant's AUP report.

- NRSRO is not a party to the AUP: NRSROs are not a specified party to the AUP, as defined under the American Institute of Certified Public Accountants (AICPA) standards. As a result, the independent public accounting firm is not engaged by the NRSRO and the related reports are not intended for, or provided to, NRSROs. Moreover, historically the AUP reports are issued at closing of the securitization transaction, after the NRSRO has provided ratings on the issued securities. As a result, NRSROs are not relying on the AUP report in establishing their rating.
- AUP report limitations: The independent accountant's services described above are conducted pursuant to AUP engagements in accordance with AICPA Statements on Standards for Attestation Engagements, AT Section 201, *Agreed-Upon Procedures Engagements*. Such engagements require the underwriter or issuer to specify the particular procedures to be performed by the accountant and to take responsibility for the sufficiency of such procedures for their particular purpose. Integral to the performance of the engagements is the fact that the underwriter or issuer is responsible for defining the criteria to be used in the determination of findings, which ultimately dictates the content of the accountant's report. Accordingly, the accountant does not render any opinion but instead provides a detailed description of the procedures performed and the related findings.

Further, the operative AICPA professional standards require that the users of the accountant's AUP report be limited to only those parties who have taken responsibility for the sufficiency of the procedures performed. The nature of the AUP report (i.e., the fact that the procedures are established by the specified users and distribution is restricted to only those specified users) is consistent with the conclusion that AUP services are outside the scope of due diligence services.

**Accordingly, we recommend the Commission specifically exclude the independent public accounting firm's AUP report from the definition of due diligence services.**



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### **Alternative Considered**

We acknowledge the definition of due diligence services in the Proposal is not completely clear and procedures typically performed by the independent accountants could be viewed as being included under section (1) of the due diligence services definition – “to assess the quality of the loan-by-loan data in the electronic file (“loan tape”) that aggregates the information for the pool by comparing the information on the loan tape for each loan in the sample with the information contained on the hard-copy documents in the loan file.” As a result, AUP reports may be considered by some to be “due diligence services.” **If this view is adopted by the SEC, we recommend a task force consisting of the AICPA, the accounting firms, and the SEC meet to discuss how best to address the challenges outlined above and develop appropriate alternatives.**

We appreciate the opportunity to submit our comments on the Proposal. If you have any questions regarding our comments or other information included in this letter, please do not hesitate to contact Glen L. Davison, (212) 909-5839, [gdavison@kpmg.com](mailto:gdavison@kpmg.com), or David Reavy, (212) 909-5496, [dreavy@kpmg.com](mailto:dreavy@kpmg.com).

Very truly yours,

**KPMG LLP**