



August 10, 2011

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

**Re: Proposed Rules for Nationally Recognized Statistical Rating Organizations--File Number 7-18-11**

Dear Ms. Murphy:

The American Institute of Certified Public Accountants (AICPA) is pleased to comment on the above mentioned proposed rules that would implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) intended to provide investors with information about the assets underlying asset-backed securities (ABS) in reports used by Nationally Recognized Statistical Rating Organizations (NRSRO) in determining credit ratings. The AICPA 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.

This comment letter provides perspective on the nature of the engagements accountants historically have performed for issuers and underwriters related to ABS offerings, and the rationale for our belief that the agreed-upon-procedures (AUP) reports resulting from such engagements should not be subject to the disclosure requirements of the proposed rules.

Due Diligence Services

The proposed rules for NRSROs define "due diligence services" to include services that are routinely performed by specialized third-party providers that NRSROs have deemed relevant for determining credit ratings for an Exchange Act-ABS, specifically, any review of the assets underlying an ABS for the purpose of making findings with respect to:

- the quality or integrity of the information or data about the assets included in the ABS provided, directly or indirectly, by the securitizer or originator of the assets,
- whether the origination of the assets conformed to, or deviated from, stated underwriting or credit extension guidelines, standards, criteria, or other requirements,
- the value of collateral securing such assets,
- whether the originator of the assets complied with federal, state, or local laws or regulations,
- any other factor or characteristic of such assets that would be material to the likelihood that the issuer of the .ABS will pay interest and principal according to its terms and conditions

We believe these services primarily focus on assessing the credit quality of the assets underlying the ABS.

#### Restricted Use of AUP Reports

Accountants are often engaged by issuers or underwriters to perform AUP on information included in an ABS offering document. These procedures generally include one or more of the following and may assist the issuer in discharging its review responsibilities under Section 7(d) of the Securities Act and Rule 193:

- Data tape to loan file comparison
- Recalculation of projected future cash flows due to investors
- Procedures that address other information included in the offering document

Such procedures are performed primarily to assist issuers or underwriters in verifying the accuracy of disclosures in the registration statement and prospectus, rather than to assist in assessing the credit quality of the underlying assets. Accountants perform these engagements under AT Section 201 of the AICPA's Statements on Standards for Attestation Engagements (SSAE) *Agreed-Upon Procedures Engagements*. In an AUP engagement the accountant is engaged to perform specified procedures and report the findings. The accountant's report does not include an opinion or provide assurance on the subject matter. The procedures are determined by the specified parties to the AUP engagement who take responsibility for their sufficiency for their purposes. Use of the resultant report is restricted to the specified parties who agreed to the procedures because they are aware of the limitations of the engagement. To prevent other parties, who may read the report and not fully understand its purpose or context, from being misled, AT Section 201 requires that a statement be added to the report indicating that the report is not intended to be and should not be used by anyone other than the named specified parties.

NRSROs and potential investors would not be specified parties to the AUP report and therefore would not be intended users of the report. The Act requires public disclosure of the findings of third-party due diligence providers, which conflicts with the objective of an AUP report which is intended to provide information to a very limited group of informed report users.

In addition, the proposed rules would require the provider of due diligence services to provide a written certification that contains language prescribed by the proposed rules. Neither AT Section 201 nor the other attest standards provide for the form of report (certification) called for in proposed Form ABS 15-E. Much of the language in the proposed certification is subjective, and professional standards as well as liability concerns would prevent an accountant from stating that he or she has performed a "thorough review" of information because that term is undefined. Therefore, it is unlikely that accountants would be willing to perform services that do not clearly fall outside the definition of due diligence services. In our view that result would be detrimental to investors because it would limit the assistance accountants have traditionally provided to underwriters in their review of the accuracy of information provided to investors in the offering document.

### Timing of the Delivery of AUP Reports

The intent of Section 932(a)(8) is to publicly disclose “findings and conclusions” resulting from a thorough review of information that is “necessary for an NRSRO to provide an accurate rating.” Accountants’ AUP reports typically are not delivered until the closing of the securitization transaction, which occurs after the NRSRO has determined its credit rating. We believe this further illustrates, from a practical perspective, that AUP reports do not constitute “due diligence reports obtained by issuers or underwriters...that are relevant to the determination of a credit rating.”

### Exemption of Certain Services Provided by Accountants

Certain procedures typically performed by accountants related to an ABS offering, specifically the data tape to loan file comparison, could be construed to fall within the first category of due diligence services (a review of the quality or integrity of the information or data about the assets provided to the NRSRO by the originator, securitizer or underwriter) and thus, would potentially be subject to additional reporting and certification. For the reasons explained below, we do not believe that the types of services provided by accountants represent due diligence services as contemplated by the Act because such services are not performed for the purpose of assisting the NRSRO in determining a credit rating for an ABS or pursuant to requirements established by the NRSRO. The other four categories of due diligence services listed above are not services that accountants have traditionally performed for issuers or underwriters of securitizations.

The due diligence standards published by NRSROs contemplate testing data quality as an integral part of overall due diligence related to the credit quality of the assets underlying the ABS. In practice, we are not aware that NRSROs use third-party due diligence providers to test the integrity of the data without also requesting that they perform due diligence procedures on specific assets for the other purposes outlined in the proposing release. Historically NRSROs have not requested access to AUP reports related to procedures performed at the request of the issuer or underwriter to selectively compare data on the loan-tape to hard-copy documentation in the underlying loan file.

As such, we believe that AUP reports provided by accountants to underwriters and issuers do not constitute due diligence services as contemplated by the Act because

- such services are performed to assist issuers or underwriters in complying with the requirements of securities laws and are not performed to satisfy the published due diligence standards of NRSROs, and
- NRSROs are not specified parties to the AUP report provided by the accountant, therefore the report cannot be provided to, used by, or relied upon by the NRSRO in connection with its credit rating.

### Recommendation

We recommend that the SEC clarify that due diligence services subject to public disclosure include only procedures and findings provided by third parties that are used by the NRSRO to satisfy its published due diligence standards. Such a clarification would better align the scope of the rules with the intent of the Act to address only information that was used by the NRSRO in the development of a credit rating.

We would appreciate the opportunity to further discuss our comments with members of the Securities and Exchange Commission or its staff.

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

Respectfully submitted,

A handwritten signature in black ink that reads "Darrel R. Schubert". The signature is written in a cursive style with a large initial 'D'.

/s/ Darrel R. Schubert

Chair, Auditing Standards Board