THE FINANCIAL SERVICES ROUNDTABLE
Financing America's Economy

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November 15, 2010

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

Regarding: File Number S7-26-10, Issuer Review of Underlying Assets (§ 945 and certain aspects of § 932).

Dear Ms. Murphy:

The Financial Services Roundtable[1] respectfully submits these comments in response to request for comments by the Securities and Exchange Commission (the "Commission") with respect to its proposed rulemaking, File No. S7-26-10, to implement section 945 (and certain aspects of Section 932) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2] Section 945 of the Dodd-Frank Act requires issuers of registered asset-backed securities ("ABS") to perform a review of the underlying assets and "disclose the nature of the review."[3] Section 932, which is focused on reform of the credit rating process, applies only to due-diligence reports conducted by independent parties.[4]

The Financial Services Roundtable appreciates the efforts the Commission has made to implement Section 945 within the 180-day implementation schedule mandated by Congress. We recognize, as well, that the Commission is constrained in its approach by the Congressional mandate,

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[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $74.7 trillion in managed assets, $1.1 trillion in revenue, and 2.3 million jobs.

[2] Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1897 (July 21, 2010).

[3] Section 945 amends 15 U.S.C. 77g (section 7 of the Securities Act of 1933) to include "(d) Registration statement for Asset-Backed Securities – Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 3(a)(77) of the Securities Exchange Act of 1934) that require any issuer of asset-backed security – '(1) to perform a review of the assets underlying the asset-backed security; and (2) to disclose the nature of the review under paragraph (1)'."

[4] Section 932 adds Section 15E(s)(4)(A) to the Securities Exchange Act: "(4) Due Diligence Services for Asset Backed Securities – (A) Findings – The Issuer or underwriter of any asset-backed security shall make publically available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter."

and we have limited our comments to those aspects of the proposed rules that we believe fall within the Commission's discretion. We thank the Commission for the opportunity to comment.

We believe that the smooth functioning of the securitization markets requires that third parties who have traditionally provided essential oversight and support for the process be comfortable continuing to do so. As has recently been demonstrated by the rescission of Rule 436(g) and the NRSROs' expressed unwillingness to be named as experts in registration statements, issuers may not have the ability to cause third parties to support their compliance with regulations where such third parties are concerned about their own potential liability. Given the possibility for severe disruption of the securitization markets if the Commission places burdens on third-party providers that they will not accept, and the potential adverse effects such a disruption would have on the availability of consumer and business credit, we urge caution in implementing the Dodd-Frank Act requirements.

Our comments address four primary aspects of the proposed rules or the Commission's questions that our members felt were very significant to the implementation of Sections 945 and the related portion of Section 932(s)(4). These are summarized as follows:

1. We support the ability of issuers to comply with their review requirements by engaging third parties to conduct the reviews, but we are concerned that the proposed requirements for due diligence providers to be named as experts in registration statements may limit, rather than enhance, the reviews that are conducted. We encourage the Commission to permit a more flexible approach to these matters.
2. We believe that the nature of an appropriate review of the assets included in a particular transaction depends significantly on the nature of those assets, the structure of the transaction and whether the party securitizing such assets also originated them. Because no single form or standard of review will be appropriate in all instances, we support the Commission's decision not to propose a minimum standard or type of review.
3. We believe the Commission's proposed description of due diligence reports for which the findings and conclusions are to made public under Section 932(s)(4)(A), namely that the reports to which it applies should be "report[s] of a third party engaged for purposes of performing a review of the pool assets," is an appropriate standard. The Commission uses similar phrasing in proposed Rule 193. We believe, however, that the Commission should provide guidance as to what constitutes "a review of the pool assets," in particular to clarify that legal opinions relating to disclosure and accountants' agreed-upon procedures letters, which generally include a "tick and tie" comparison of the issuer's accounting records to the offering document disclosure, should not be included within the scope of that phrase.
4. We believe strongly that compliance with the review requirements under proposed Rule 193 should not be a condition for reliance on the safe harbors for exempt offerings under Rule 144A and Regulation D.

Third-Party Due Diligence Providers

Section 945 of the Dodd-Frank Act requires only that the issuer perform a review of the underlying assets and disclose the nature of the review. It does not prescribe a standard for such review and does not require the disclosure of the results of the review. Proposed Rule 193, when coupled with the proposed expansion of disclosure requirements under Item 1111 of Regulation AB, would go well beyond the Congressional mandate, in that in would require disclosure of the findings and conclusions of that review. Further, while the Commission has facilitated compliance with the requirement to some degree by allowing reliance on third-party due diligence providers, it has limited the utility of that

accommodation by requiring such parties to be named as experts.

Although a market may evolve to include due-diligence providers who are willing to be named as experts in registration statements, that market does not currently exist. We believe the implementing rules should be applied cautiously in this regard, so that the proposal does not create an impediment to conducting securitizations or to the use of third party due-diligence providers in public offerings. We propose an intermediate approach that would allow two alternative options: first, as the Commission has proposed, that the issuer name the third-party due-diligence provider if the provider is willing to be named and assume expert liability; and second, alternatively, that the issuer disclose only that it had used a third-party due-diligence provider (without naming the provider), the scope of the third-party review, a summary of the third-party's findings, and the extent to which the issuer had relied on that review. We believe the Commission should also clarify that a third-party due-diligence provider, by accepting expert liability, is not expertising the scope of the review but is only assuming liability for the conduct of the review the issuer engaged it to perform, in accordance with the contractually agreed (and disclosed) scope of engagement with the issuer.

Standards for Review

We agree with the Commission's general approach to Rule 193, which does not propose to establish a minimum standard of review for all asset-backed securities or mandate a specific type of review. The language of Section 945 does not require this and we believe that the Commission is not obligated to establish minimum standards. We do not believe a generic minimum standard could effectively describe appropriate due diligence for all asset classes and structures, and we agree with the Commission's assessment that the tight time frame to implement Section 945 does not provide sufficient time to formulate appropriate class-by-class standards.

Review of the Assets

An important issue for securitization participants in terms of Section 932(s)(4) is the extent to which the implementing regulations would capture documentation that we would not consider to constitute a review of the assets. For example, the agreed-upon procedures letter from the issuer's accountants is generally a review of accounting records, not of the assets themselves. Legal opinion and negative assurance letters relating to disclosures also generally do not constitute a review of the assets. When we discuss "review of the assets," we envision a review of a loan file to ensure that it has the required supporting documentation and that the terms provided in any description of the loan are consistent with those reflected in the loan file—acknowledging that for some asset classes, such as credit cards, a physical loan file may not exist. For such asset classes, we believe management's review of internal controls over the systems through which assets are originated and serviced may be able to be used as a substitute for a review of the underlying loan files but not the sort of tick-and-tie process engaged in by accountants with respect to the agreed-upon procedures letter does not rise to that level. Because providers of third-party reports typically restrict reliance by others on those reports, ensuring that the scope of the requirements relating to review of the assets is not overly broad will be critical to ensuring the smooth continuing functioning of the markets.

Safe Harbors for Exempt Offerings

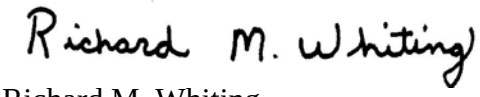
We appreciate that the Commission and other regulators have increasingly been reviewing whether they can attach conditions to their regulatory safe harbors in an effort to promote market changes beyond those with respect to which the regulators have direct, clear authority. Question 3 of the

Release, for instance, asks whether the Commission should condition the exemptions from registration provided by Rule 144A and Regulation D on whether the issuer performed an asset-level review consistent with that required by proposed Rule 193. Congress has given the Commission a sweeping expansion of its powers in the Dodd-Frank Act, but specifically limited the provisions of Section 945 to registered public offerings. We do not believe conditioning the safe harbors on compliance with a requirement that Congress specifically applied only to registered offerings is appropriate. Moreover, we believe strongly that modification of regulatory safe harbors to provide regulatory authority over activities that are intended to be beyond the scope of the regulator's powers will introduce uncertainty for market participants who rely on safe harbor regulations for their capital formation activities and, accordingly, hamper such activities.

Conclusion

We support the Commission's decisions not to recommend a mandatory minimum level of review to satisfy the requirements of Section 945, and to permit reliance on third-party due-diligence providers. We have concerns, however, that tying such reliance to a willingness of the third-party providers to be named as experts in the registration statement will limit the availability of third-party due-diligence services to the detriment of investors as well as issuers. In addition, we believe that the term "review of the assets" should be clarified to ensure that it is not overly broad and does not capture documentations such as the accountants' agreed upon procedures letter. We appreciate your consideration of these comments. Please feel free to contact me at Rich@FSRound.org if you have any questions or concerns about this letter or any other issues.

Best Regards.



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