November 15, 2010

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

File Number: S7-26-10

Dear Ms. Murphy:

The undersigned professional appraisal organizations, representing many thousands of professional appraisers in the U.S.,[1] appreciate the opportunity to comment on the above-referenced proposed rule regarding issuer-review of assets in offerings of asset-backed securities (S7-26-10, published in the *Federal Register* of October 19, 2010). The rule is being proposed to implement Sections 945 and 932 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. It would require any issuer registering the offer and sale of an ABS to perform "a review of the assets underlying the ABS" and disclose the nature of that review, including, most importantly, its "findings and conclusions". The review and reporting provisions would apply not only to issuers themselves but to any third party engaged by the issuer to review the asset; and, would require the filing of a new form to include certain disclosures relating to third-party due diligence providers.

Our organizations previously filed written comments with the Commission on July 30, 2010, in response to a closely related rulemaking proposal (S7-08-10 published in the *Federal Register* of May 3, 2010) involving revisions to Regulation AB and other rules regarding loan-level disclosures during the ABS offering process. The Commission's May 3rd proposed rule (often referred to as the "2010 ABS Proposing Release") would require issuers of Asset-Backed Securities (ABS) to disclose a variety of data points to investors – including information on the value of property collateralizing loans contained in pools of securitized loans. We mention our previous comment letter because we believe the two rulemakings are interrelated; and that comment on the issuer-review proposal requires reference to the May 3rd proposal.

As in our July 30th letter to the Commission on the 2010 ABS Proposing Release, our issuer-review comments focus on issues involving valuations of property collateralizing loans comprising asset-backed securities.

[1] Each of our organizations teaches, tests and credentials its members for professional appraisal practice and appraisal review in the area of commercial and residential real property valuation. Additionally, the American Society of Appraisers (ASA) is a multi-disciplinary appraisal organization that teaches, tests and credentials its members for professional appraisal practice and appraisal review in business valuation and in personal property valuation (including fine arts and machinery and technical specialties).

EXECUTIVE SUMMARY

Our organizations have concluded that the rule, as proposed, falls far short of what is necessary to give investors the ability to evaluate the level and adequacy of the issuer's review of the assets in a securitized pool of loans or leases. The proposed rule's principal defect is that it fails to establish even minimum requirements regarding the level or type of asset review that ABS issuers must perform. The absence of such requirements means that issuers will decide for themselves the nature and extent of such reviews; or even, conceivably, whether any substantive review will be conducted at all. A likely consequence of this "hands-off" policy is that investor confidence will be undermined not only as to the adequacy of the issuer's review but also with respect to the accuracy of essential information about the assets provided in the original ABS offering documents.

With respect to the value of assets collateralizing securities, the proposed rule is deficient in two ways: First, it does not even require an issuer to review the accuracy of asset valuations reported in the ABS offering documents; and, Second, even if issuers choose voluntarily to do so, the proposed rule does not establish even minimum requirements regarding acceptable qualifications for reviewing the accuracy of valuations and acceptable valuation methodologies and standards to be followed. Absent such requirements, investors will have no objective basis to believe that a review of asset valuations reported in the ABS disclosure documents has confirmed the reliability of those valuations.

We recognize that the proposed rule requires issuers to accurately describe and disclose the nature and extent of their review of assets in ABS offerings. However, without the establishment of review standards, the mere disclosure that a review of assets has occurred is unlikely to be of measurable benefit to investors. With respect to asset values, a Commission issuer-review rule which permits the use of broker price opinions (BPOs) or automated valuation models (AVMs) to confirm the accuracy of valuations reported in the ABS issuing documents, will be of little benefit to investors and is far more likely to mislead them. The experience of our members strongly suggests that most investors possess insufficient knowledge about valuation services and methodologies to fully appreciate the crucial differences between a valuation performed by a professional appraiser, on the one hand, and a valuation based on a BPO or AVM (where conflicts-of-interest or technological limitations come into play), on the other.

Our organizations believe that the Commission's final review rule should establish requirements for reviewing the accuracy of asset valuations sufficient to ensure the reliability of such reviews, including substantial reliance on professional appraisers for this purpose. The Commission should not assume that investors possess sufficient knowledge about valuation services to distinguish between those which are reliable and those which are not.

DISCUSSION OF OUR VIEWS ON THE ISSUER REVIEW RULE

Our Organizations Believe That The Rule, As Proposed, Will Not Effectively Protect ABS Investors Because It Fails To Establish Requirements On The Levels Or Types of Asset Reviews Involving The Value of Property Collateralizing Securitized Loans And Other Essential Components of the Loans Comprising the ABS

Rule 193, as proposed, would require issuers to perform a review of the assets underlying a registered ABS, but leaves decisions about the level and type of review entirely to the issuer. While the proposal describes various levels and types of reviews that could theoretically be performed (footnote 17 refers to reviews of borrowers' creditworthiness; reviews of whether loans were originated in compliance with applicable laws; and, reviews of the accuracy of the property values reported by the mortgage originators), it allows issuers to decide for themselves the nature and extent of their reviews, so long as they are accurately described and properly disclosed to investors. We believe that effective – and uniform – investor protection can only be assured if the Commission establishes, at the very least, minimum review requirements.

We are made particularly uncomfortable by the absence of specificity with respect to issuer reviews of assets because the Commission has yet to finalize its "2010 ABS Proposing Release" – that is, its basic loan-level asset disclosure requirements when issuers offer asset-backed securities (proposed rule File # S7-08-10). Until a final rule or an interim final rule has been issued governing disclosure requirements for ABS offerings, it is difficult to determine the likely adequacy or inadequacy of the related issuer-review requirements. Issues involving the disclosure of information about asset values and issuer reviews of the accuracy of those disclosures provide a good illustration of this concern.

In our July 30th comment letter on the Commission's proposed rules involving the disclosure to investors of valuations of loan-level collateral property, our organizations were highly critical of the fact that the proposals permitted issues of asset-backed securities to value such properties any way they saw fit – ways we strongly believe are inconsistent with the letter and spirit of the valuation reform provisions of the Dodd-Frank Act; inconsistent with federal housing and many banking laws; and, which are demonstrably inconsistent with consumer protection and safety and soundness in the mortgage markets. While we are hopeful that our arguments and concerns will result in a final SEC rulemaking that requires fundamental reliance on professional appraisals to value collateral property in connection with the issuance of ABS, we obviously do not know whether or the extent to which our recommended changes will be reflected in the final 2010 ABS disclosure rule.

Therefore, we are left with the possibility that the provisions of the issuer-review rule – which do not require reviews of collateral property valuations or, if issuers perform such reviews voluntarily, permit them to choose whichever valuation tools or techniques best accommodate their plan to market their securities – will compound investor confusion over the reliability of ABS issuer claims about the value of collateral properties in the event of borrower defaults. Of course, we also recognize that if the Commission's final ABS disclosure rule establishes meaningful requirements on the valuation of collateral property, the absence of comparable valuation requirements in the issuer-review rule will have a somewhat less harmful impact on investors. In order to illustrate these points, it might be useful to consider the following real-world scenarios:

> Scenario # 1: The SEC's final ABS disclosure rule requires issuers of ABS to rely on professional appraisals to value loan-level collateral property; but, the final review rule retains its current provisions on reviewing the accuracy of collateral property values. While

ABS issuers would be permitted not to review the accuracy of asset values or to use BPOs or AVMs if they voluntarily did so, investors would at least have assurance that the original ABS disclosure documents would reflect the opinions of highly trained and independent valuation professionals with respect to the value of the collateral property for the pooled mortgage loans;

Scenario # 2: The SEC's final ABS disclosure rule permits issuers to use BPOs, AVMs, property tax statements or whatever other valuation tools they choose to value loan-level collateral property; and, the final issuer-review rule retains its current provisions on the accuracy of collateral property values (i.e., issuers could rely on these same valuation tools for accuracy review purposes if they choose to conduct any such review). Under this scenario, there would be no checks-and-balances and essentially no protections whatsoever for investors with respect to the value of assets collateralizing pooled loans. Issuers could use BPOs or AVMs to review the accuracy of the BPOs or AVMs used in the offering documents to value properties collateralizing the original loans. In short, the final SEC rules involving issuer disclosures and issuer reviews of assets in connection with ABS would leave investors with no more protection or information than they had prior to the collapse of the mortgage backed securities markets;

Scenario # 3: The SEC's final disclosure rules for issuers of ABS permits them to use BPOs, AVMs or whatever other valuation tools they choose to value loan-level collateral property; but, the final rules governing reviews of the assets collateralizing the ABS, requires the use of credentialed professional review appraisers to assure the accuracy of the original valuations. Investors would be accorded some – but, in our view, still grossly insufficient – protections involving the accuracy and reliability of the values assigned to properties collateralizing the loans making up the pool.

Scenario # 4: The SEC's final disclosure rules for ABS issuers requires reliance on professional appraisals to value loan-level collateral property; and, the final rule governing reviews of the assets collateralizing the ABS, requires the use of credentialed professional appraisers to review the accuracy of the original valuations. Clearly, this scenario would provide optimal protections to investors by ensuring the accuracy of the values assigned in the original offering documents.

RECOMMENDATION: Our organizations strongly recommend that the final issuer-review rule include no less than minimum requirements regarding the level and type of review of the values assigned to properties – regardless of the type of property (i.e., whether real property or non-real property) – collateralizing loans or leases of ABS. This would mean, first, that a review of the value of assets collateralizing loans or leases would be required; and, second, that such reviews would have to be performed by professional appraisers. We fully understand the time limitations imposed on Commission action by the 180 day deadline established for the issuer-review rule by the Dodd-Frank Act. Nevertheless, we believe it is feasible – and essential – for the agency to establish minimum asset review requirements even within this narrow time-frame.

Our Responses To Questions Asked By The Commission In The Proposed Rulemaking

The Commission has asked for comment on a number of questions set forth in the rulemaking proposal. Our responses follow:

(1) The Commission asks whether investors can "evaluate for themselves the sufficiency of the review undertaken by the issuer"; and, "will issuers undertake a meaningful review absent a minimum review standard?" Our answers to both of these questions is "no". The Commission cannot and should not assume that most investors understand what does or does not constitute a reliable valuation of an asset. Additionally, the Commission cannot assume that every issuer will conduct a thorough review of the key factors which form the basis of an ABS investment decision. While the reviews of some issuers will be sufficient, some will not. That is why regulation of investment offerings is necessary in the first place.

(2) The Commission asks whether it should "mandate a minimum level of review that must be performed on the pool of assets/" For all the reasons stated above, our answer is "yes". The establishment of a minimum level of review must be specific in nature; and it must mandate a high degree of uniformity in how reviews are executed. As a general matter, Commission rules should not permit or encourage asset reviews that differ markedly from pool to pool or offering to offering. On the other hand, there are certainly circumstances where a degree of review higher than minimum levels should be required. For example, reviews of securitizations where the assets comprising the pool of loans or leases are complex and, therefore, difficult to value should require the use of the most highly credentialed appraisers. The same standard should apply in connection with subprime or even Alt A mortgage loans or complex commercial properties in the case of securitized commercial loans.

(3) The Commission asks whether the rule should "specify the types of matters – e.g., credit – that should be covered by the review?" We believe it should. Reviews of asset valuations are an indispensible component of judging the soundness of an ABS investment. But also indispensible is confirmation by the issuer, through review, that the creditworthiness policies of the originator of the loans or leases have been observed and that there has been compliance with all relevant laws.

(4) The Commission asks whether it should "establish standards for a review of the accuracy of the property values reported by the originators for the underlying collateral." For the reasons stated above, our answer is clearly "yes". If the mortgage and housing marketplace events of the past several years prove anything, it is that nothing is more important to the soundness of an investment in a mortgage-backed security than the value of the collateral property in the event that a borrower loses his or her job and, as a result, the loan goes into default. The same logic applies with respect to non-real property assets collateralizing an ABS. The Commission should establish standards for reviews of the accuracy of the property values reported by the originators for the underlying collateral even when that collateral involves non-real property assets.

(5) The Commission observes that the "scope of third-party due diligence providers is broad enough to include appraisers and engineers for purposes of Section 15E(s)(4); and it asks whether there is a basis for a different approach. Our organizations support a policy that allows issuers to identify and rely on third-party reviews to satisfy its obligations under proposed Rule 193, as well as requiring issuers to disclose third-party findings and conclusions and file a new form to include certain third- party disclosures – including situations where the third-party is a valuation firm retained by an issuer to ensure the reliability of valuations of assets collateralizing a security. We assume that our organizations will have an opportunity, along with other stakeholders, to comment when the Commission adopts rules in the future to establish the appropriate format and content for the certifications relating to third-parties required pursuant to the Securities Exchange Act of 1934.

(6) The Commission raises various issues relating to potential conflicts-of-interest among third-party due diligence providers. In this regard, our organizations wish to point out that professional appraisers (whether they are licensed or certified real estate appraisers under state appraiser licensing laws or appraisers credentialed by generally recognized professional appraisal organizations such as our own) are required to be fully independent of the transaction giving rise to the appraisal. All professional appraisers are required to adhere to the Ethics Rule of the Uniform Standards of Professional Appraisal Practice (USPAP) which requires them to conduct the valuation free of any financial or economic interest in the underlying transaction and to be free of any other bias. When professional appraisers are utilized to perform or review asset valuations in connection with registered (or even non-registered) ABS, their appraisals are required to be impartial, objective and without accommodation of any personal interest. A violation of USPAP's Ethics Rule will almost certainly result in loss of a real estate appraiser's state license or certification. Additionally, an individual with a professional appraisal credential – in whatever valuation discipline – from a recognized professional appraisal organization, such as the undersigned organizations, faces a loss of that credential if an Ethics Rule violation occurs. This is in addition to applicable penalties under federal and state statutes. Accordingly, the ethics obligations of a professional appraiser govern his or her conduct whether the appraisal is performed for the ABS issuer or for a third party due diligence provider.

Thank you for considering our views. If you have questions or need additional information, please contact the American Society of Appraisers government relations representative in D.C., Peter Barash at 202-466-2221 (peter@barashassociates.com) or ASA's Director of Government Relations, John Russell at 703-733-2103 (jrussell@appraisers.org).

Sincerely,

American Society of Appraisers
American Society of Farm Managers and Rural Appraisers
National Association of Independent Fee Appraisers