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By E-Mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attn: Elizabeth M. Murphy, Secretary

Re: Release Nos. 33-9150; 34-63091; File No. S7-26-10
Comment Letter – Issuer Review of Assets in Offerings of Asset-Backed Securities

Ladies and Gentlemen:

The Federal National Mortgage Association ("Fannie Mae") is submitting this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding Release Nos. 33-9150; 34-63091; File No. S7-26-10, dated October 13, 2010 (the "Proposing Release"), relating to issuer review of assets in offerings of asset-backed securities ("ABS"). Fannie Mae appreciates the opportunity to comment on the Proposing Release.

I. Introduction

The Commission has issued the Proposing Release in accordance with Section 945 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). The proposed rule requires any issuer registering the offer and sale of an ABS to perform a review of the assets underlying the ABS. The Commission is also proposing amendments to Item 1111 of Regulation AB that would require such ABS issuer to disclose the nature of its review of the assets and the findings and conclusions of the issuer's review of the assets, as well as the results of any third-party review. Although the Commission does not propose to extend such requirement to issuers of unregistered ABS, it would require disclosure in the event that such issuer chooses to employ a third party to perform due diligence.

A. Securities Issued

Fannie Mae's primary securitization activity is effected through guarantor swaps, in which a seller (which is not necessarily the originator) of single-family or multifamily residential mortgage loans sells mortgage loans owned by it to Fannie Mae in return for a Mortgage-Backed Security ("MBS") backed by those loans. The seller may retain the MBS or sell them in the open market. Multiple sellers can also sell mortgage loans to Fannie Mae in return for an undivided interest in an MBS backed by loans sold to Fannie Mae by multiple sellers. Fannie Mae may also purchase loans from sellers for cash and later form an MBS. Monthly payments of principal and

interest on MBS are funded by passing through to MBS holders the cash flow provided by the underlying mortgage loans. Generally, the mortgage loans are pooled in a pass-through trust relating to each MBS. Fannie Mae is the trustee of the trust.

Fannie Mae also aggregates MBS into pools and issue securities backed by such MBS. Such securities may be either a mere aggregation of such securities ("Mega Securities") or a strip of such securities into interest-only and principal-only cash flows ("Stripped MBS"). Fannie Mae is the trustee of the trust related to the Mega Securities and Stripped MBS.

Fannie Mae also engages in other resecuritization transactions in which MBS back multiclass time-tranched securities ("REMIC Securities") issued through a trust that qualifies as a real estate mortgage investment conduit for federal income tax purposes. In turn, REMIC Securities can also back other "Re-REMIC Securities." Fannie Mae is the trustee of the trust related to the REMIC Securities.

In addition, Fannie Mae can purchase private-label ABS issued by unaffiliated third parties, resecuritize those ABS and issue new securities backed by those ABS ("Fannie Mae ABS"). The residential single-family and multifamily mortgage loans that back the ABS purchased by Fannie Mae may also back ABS that have not been purchased by Fannie Mae. (The same trust typically issues the ABS purchased by Fannie Mae as well as the ABS not purchased by Fannie Mae.) The third-party ABS that are resecuritized by Fannie Mae are placed in a trust of which the trustee typically is Fannie Mae.

The securities described above (the "Fannie Mae Securities") differ from those in the registered ABS market insofar as Fannie Mae generally guarantees payments of principal and interest thereon.[1] Issuers of non-GSE, private-label securities generally do not guarantee their own ABS. Moreover, the Fannie Mae Securities are statutorily exempt from registration under the Securities Act of 1933 (the "Securities Act") and from reporting under the Securities Exchange Act of 1934 (the "Exchange Act").

B. Fannie Mae's Pre-Issuance Due Diligence

In general, the level of Fannie Mae's pre-issuance due diligence depends on the channel through which it acquires mortgage loans. There are four major channels: (i) single-family "flow" acquisitions (i.e., acquisitions pursuant to a contract whereby lenders agree to deliver and Fannie Mae agrees to accept mortgage loans relatively soon after such mortgage loans are originated); (ii) single-family "bulk" transactions (i.e., acquisitions of a defined pool of already-existing mortgage loans); (iii) multifamily "flow" acquisitions; and (iv) multifamily "bulk" transactions. Fannie Mae also acquires MBS and other securities for re-securitization through its Capital Markets channel.

[1] The structures of ABS issued by the Federal Home Loan Mortgage Corporation ("Freddie Mac") are similar to those of Fannie Mae.

In the case of single-family and multifamily "flow" acquisitions (as well as Capital Markets acquisitions), Fannie Mae currently performs very limited pre-issuance due diligence, but relies primarily on seller representations and warranties. The lender will perform its own underwriting of the loans in order to allow it to make its representations. This underwriting invariably includes obtaining reports from third parties, whether they be credit reports, appraisals, title searches, termite inspections or other reports from third-party vendors. Fannie Mae does engage in some post-purchase reviews of such mortgage loans.

Single-family "bulk" transactions normally follow the same procedure, although Fannie Mae will, from time to time, engage a third party either to perform a review of the mortgage loans to facilitate a delivery or to simply collect data and deliver it to Fannie Mae. Alternatively, the mortgage seller may itself engage a third party to perform such a review and provide comfort to the seller as it makes its representations and warranties to Fannie Mae.

Fannie Mae always engages a third-party due diligence firm to review the loans in a multifamily "bulk" transaction. Using a complete credit and legal loan file, the third party firm will verify all data elements needed for disclosure. Additionally, a sample of the loans in the transaction will be selected for credit and legal due diligence to be conducted by the third-party firm.

II. Discussion

Part of the Proposing Release applies only to registered securities. Since Fannie Mae Securities are exempt from registration under the Securities Act, we are not commenting on those provisions of the Proposing Release.

Proposed Section 240.15Ga-2, however, does apply to Fannie Mae Securities and requires that both issuers and underwriters of any asset-backed security file Form ABS-15G containing the findings and conclusions of any report of a third party engaged for purposes of performing a review of the pool assets obtained by the issuer or underwriter, respectively. The proposed rule requires such Form to be filed five business days prior to the first sale in the offering. In response to Question 22 of the Proposing Release and for reasons set forth herein, Fannie Mae believes that both Fannie Mae and the underwriters of Fannie Mae Securities should be exempt from this regulation.[2] In the event the rule ultimately is applied to Fannie Mae, we recommend that the proposed rule be revised to clarify the obligations of both Fannie Mae and its customers.

[2] The Commission is relying on the definition of "asset-backed security," as added by the Dodd-Frank Act to the Exchange Act, to apply the requirements in the Proposing Release to issuers of nonregistered securities. While we believe that it is unclear that Congress intended such definition to include such issuers, we are addressing in this letter the concerns that we would have if such rule, in its current form, were applied to Fannie Mae.

A. Application of This Regulation to Fannie Mae Would Prevent Lenders from Relying Upon Forward Commitments to Offer Interest Rate Locks to Borrowers

The secondary mortgage market routinely trades single-family MBS on a TBA ("To Be Announced") basis. Lenders enter into forward commitments to sell MBS to buyers. At the date of the forward commitment, the MBS has frequently not yet been formed (and the loans backing them frequently have not yet been originated), and the commitment describes the basic parameters that must be met for the MBS to be a good delivery. Such commitments are usually completed within 30-90 days after the date the commitment is entered into.

Once a forward commitment is in place, a lender is able to offer interest rate locks to prospective borrowers, since the lender has a third-party commitment to buy MBS at a particular interest rate. Such process is a low-cost, efficient method of locking interest rates, is critical to the mortgage finance system, and has been well-accepted by mortgage security investors for many years.

If issuers and underwriters (which may include our lenders – see Paragraph D below) of TBA securities are required to file Form ABS-15G five business days prior to any "sale" of the securities (i.e., five business days prior to the date the commitment is entered into), such forward commitments would no longer be possible. In effect, it is the forward commitment that enables the lender to originate the loan. Absent forward commitments of TBA securities, the mortgage finance industry would be forced to develop an alternative model for lenders to continue to lock in interest rates.

B. Application of This Rule to Fannie Mae Would Not Further the SEC's Stated Purpose

The SEC notes in the proposed rule that Section 15E(s)(4)(A) of the Exchange Act, as added by Section 932 of the Dodd-Frank Act, which requires issuers and underwriters to make the findings and conclusions of third-party due diligence reports publicly available, is "aimed at improving the quality of information received by ratings agencies issuing ratings on asset-backed securities in registered and unregistered offerings." Fannie Mae Securities are not rated by ratings agencies. Therefore, application of the rule to Fannie Mae Securities does not further the stated aim of the regulation.

C. This Disclosure Would Be of Little Value to Investors Due to Fannie Mae's Guaranty

The Fannie Mae guaranty ensures the timely payment of principal and interest to the investor.[3] Consequently, the risk of loss on a loan customarily associated with loan underwriting deficiencies and the inclusion of non-compliant loans in securitization pools has little relevance to investors in guaranteed securities. We note finally that the Federal Housing Finance Agency, as conservator of both Fannie Mae and Freddie Mac, has advised both enterprises that it has no intention of repudiating this guaranty obligation because it views repudiation as incompatible with the goals of the conservatorship.

D. The Rule Should Not Apply to Mega Securities, Stripped MBS, Fannie Mae ABS and REMIC Securities Backed by MBS

Fannie Mae's Mega Securities, Stripped MBS, Fannie Mae ABS and those REMIC Securities backed by MBS involve, in each case, the resecuritization of Fannie Mae MBS. Filing of Form ABS-15G with respect to such resecuritizations would be burdensome and duplicative, not adding any additional information to potential investors. Consequently, the Commission should make clear that the proposed rule would not extend to such resecuritizations.

E. It is Unclear Whether Fannie Mae's Lenders Would Be Required to File Form ABS-15G

The typical MBS transaction in which Fannie Mae engages involves a swap of mortgage loans with a mortgage seller in exchange for MBS. The mortgage seller will frequently sell such MBS in the secondary market. It is unclear whether the mortgage sellers would be "underwriters" under the securities laws, and in particular, under this rule. The term "underwriter" is defined in the Securities Act as "any person who has purchased from an issuer with a view to, or offers or sells for an issuer with, the distribution of any security...."[4] If the Commission were to view such mortgage sellers as "underwriters," sellers who engaged third parties to perform due diligence reviews prior to securitization would be required to file the results with the SEC for each such transaction. (Since sellers who are originators obtain third-party appraisals and other reports described above in connection with loan originations, it is possible that such filings would be required in connection with every pool.) Many of these sellers are small and medium lenders who are unaccustomed to making SEC filings. The costs and difficulty associated with such filings could impede the ability of these lenders to access the secondary market, thus making it more difficult for them to compete with larger lenders.

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[3] Fannie Mae has issued a limited number of REMICs backed by whole loans in which one or more of the tranches was not guaranteed. Such unguaranteed issuances constitute a *de minimis* percentage of Fannie Mae's overall issuances (significantly less than 1% of the Fannie Mae Securities) and in most cases were privately placed. Fannie Mae has not issued any such unguaranteed securities in 2010.

[4] 15 U.S.C. 77ccc

F. If Fannie Mae and Underwriters of Fannie Mae MBS Are Not Exempted From The Rule, More Clarity is Needed Surrounding Third-Party Reports Covered Thereby

The proposed regulation covers "any report by a third party engaged by the issuer [underwriter] for the purpose of reviewing assets underlying an asset-backed security." This clearly includes reviews performed by third parties to ensure that the borrower met applicable underwriting criteria to qualify for the loan. We doubt that the Commission intends every credit report, appraisal, termite inspection report and other similar report to be disclosed, but simply intends to include those reports prepared by firms that provide due diligence of assets and not those reports issued by credit bureaus, appraisers, pest control firms, and other similar providers. If so, the rule should so clarify. Reviews are also frequently undertaken (such as in Fannie Mae's multifamily business) to ensure that the data in the loan file matches that reported by the seller, particularly with respect to such items as interest rate, maturity date, ARM features, and prepayment premium provisions. If discrepancies are found, such data are usually adjusted prior to issuance of the securities and the loan in question remains in the pool. In REMICs and other structured transactions, accountants frequently are engaged to confirm various data and assumptions in prospectuses. Because data would be changed in prospectuses if discrepancies are found, there would be no value in reporting such results on Form ABS-15G. Additionally, opinions may be provided from time to time by outside counsel on various legal matters/issues in connection with particular transactions. We request clarification that receipt of those opinions should not trigger any filing requirement.

III. Conclusions

As discussed above, Fannie Mae believes that application of the Commission's Proposing Release to Fannie Mae does not achieve any significant policy purpose yet unnecessarily complicates the efficient locking of interest rates for residential borrowers and creates very significant and costly burdens for Fannie Mae and its lender customers. Consequently, the Commission should exempt Fannie Mae Securities from this requirement. If the Commission determines to apply such rule to Fannie Mae Securities, we ask that it determine with greater clarity which parties should be obligated to file Form ABS-15G and which third party reports should be subject to the rule.

Fannie Mae very much appreciates the opportunity to provide the foregoing comments to the Commission. Should you have any questions or wish to clarify any of the matters addressed in this letter, please do not hesitate to contact Paul R. VanHook, Vice President and Deputy General Counsel at (202) 752-1333 or paul_vanhook@fanniemae.com.

Sincerely,

FANNIE MAE

Timothy J. Mayopoulos
Executive Vice President, Chief Administrative Officer, General Counsel and Corporate Secretary