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VIA ELECTRONIC MAIL

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

RE: Issuer Review of Assets in Offerings of Asset-Backed Securities
Release Nos. 33-9150; 34-630901 File No. S7-26-10
75 *Federal Register* 64182, October 19, 2010

Dear Ms. Murphy:

The ABA Securities Association (ABASA)[1] appreciates the opportunity to respond to the request for comment by the Securities and Exchange Commission (Commission) on the above-referenced release (Proposing Release). Our members serve as originators, issuers, sponsors, and underwriters across the broad spectrum of securitization transactions.

The Proposing Release would implement two related provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act[2] (Dodd-Frank Act). Section 945 added Section 7(d) to the Securities Act of 1933 (Securities Act) and simply requires issuers of publicly offered ABS "(1) to perform a review of the assets underlying the asset-backed security; and (2) to disclose the nature of the review. . ." Section 932 adds new Section 15E(s)(4) to the Securities Exchange Act of 1934 (Exchange Act) that, among other provisions, requires an issuer or underwriter of any asset-backed securities (ABS) to make publicly available the finding and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

ABA generally supports the need for appropriate disclosure with respect to due diligence reports, and we suggest modifications which we believe will provide investors with more useful information about such reports while complying with the Dodd-Frank provisions.

[1] ABASA is a separately chartered affiliate of the ABA that represents those holding company members of the ABA that are actively engaged in capital markets, investment banking, and broker-dealer activities.
[2] Pub. L. No. 111-203 (July 21, 2010). The Proposing Release would also implement the requirement of Section 943(1) to require rating agencies to provide descriptions of representations, warranties and enforcement mechanisms in ABS transactions and how these compare to other transactions. This comment letter does not address this requirement of Section 943.

Discussion

1. Section 945

The Proposing Release would implement Section 945 by proposing new Rule 193 under the Securities Act requiring an issuer of ABS to conduct a due diligence review of assets without specifying either a minimum standard for review or the types of review required. The Commission has requested comment on whether it should specify the nature of the review, but states in the Proposing Release that the review may vary depending on the nature of the securitized assets and the degree of continuing involvement of the sponsor and that such an undertaking could require a lengthy period of time.

Given the 180-day implementation time frame for Section 945, ABASA agrees the better course of action is *not* to establish a minimum standard for review or the type of review required given the significant amount of time it would take to craft such rules appropriately. We note the Commission's statement that disclosure of the nature of the review "will give investors the ability to evaluate the level and adequacy of the issuer's review of the assets."[3] This issue can be revisited in the future should the Commission and investors determine that the level of due diligence then existing fails to satisfy Congressional intent.

We believe that Section 945 was Congress' response to the poor performance during the mortgage crisis of the assets underlying some securitization transactions. We urge the Commission in the final rule to make clear that a review meets the statutory requirements if it relates to the quality of the assets in the pool and not whether it relates to other types of reports and opinions that are routinely received as part of the securitization process. We further request that the final rule specify that a review of a statistically significant random sample of pool assets is sufficient, as opposed to a review of every asset in a pool, which can number in the thousands.

As proposed, Rule 193 would permit the required due diligence review to be performed by a third party on behalf of the issuer so long as the third party agrees to be named in the registration statement and consents to be named as an "expert" under Section 7 of the Securities Act and Rule 436. This would subject the third party to considerable potential liability. Importantly, such third-party providers are not part of a regulated industry with set standards to which they must adhere as are other "experts" subject to Securities Act liability. ABASA believes it likely that few third-party due diligence providers would be willing to subject themselves to such liability but would rather withdraw their services in such instances. The loss of independent third parties to review pool assets would not serve the best interests of investors in ABS. Accordingly, ABASA strongly urges the Commission to withdraw the expert liability requirement for third-party due diligence providers.

The Commission is also re-proposing certain provisions specified in its proposed comprehensive revisions to Regulation AB (the 2010 ABS Proposing Release), which applies to ABS publicly registered under the Securities Act. As re-proposed, the Commission would require issuers to disclose not only the nature of the due diligence review as specified in Section 945 but also the

[3] 75 *Fed. Reg.* 64182 at 64183, n. 18.

findings of both issuer reviews and third-party reviews. The Commission recognizes that Section 945 does not require disclosure of the findings and conclusions but has proposed this additional disclosure in an attempt to harmonize Section 945 with Section 932. However, Section 932 does *not* require such disclosure. Moreover, even if it did, we believe there is no need to harmonize these sections, because Section 932 is limited to due diligence reports made to credit rating agencies. Congress adopted Sections 945 and 932 at the same time, and had it intended to require disclosure of the findings of a review under Section 945, it clearly could have done so. Given this Congressional intent, we believe it is inappropriate for the Commission to substitute its judgment and impose a requirement to disclose due diligence findings under the Securities Act.

The Commission is further proposing a new amendment to Regulation AB to require issuers to disclose which entity (the depositor, sponsor, or underwriter) made the decision to include any nonconforming assets in the pool. We believe that in many cases, this decision is made by multiple parties. Even if the decision were to be made by a single entity, we believe disclosure of that entity is not material to investors and therefore should not be mandated. There is no requirement in the Dodd-Frank Act for such a disclosure.

2. Section 932

The Proposing Release would implement Section 932 by requiring the filing of Form ASB-15G to disclose the findings and conclusions of any third party engaged to perform a review obtained by (1) an issuer in an unregistered offering of ABS or (2) by an underwriter in any ABS offering whether registered or not. Unlike the timeframe for rulemaking under Section 945, there is no similar deadline under Section 932, and the Commission has requested comment on whether Section 932 should be implemented as part of a later rulemaking under Section 15E. ABASA strongly believes that this rulemaking should be undertaken as part of the broader rulemaking with respect to regulation of credit rating agencies.

Importantly, we note that Section 932 is part of Subtitle C of Title IX of the Dodd-Frank Act, which deals exclusively with credit rating agency reforms. Indeed, Section 932 amends Section 15E of the Exchange Act, which in its entirety deals with the credit ratings process and registration of nationally recognized statistical rating organizations (NRSROs). Section 15E(s)(4) is titled "Due Diligence Services for Asset-Backed Securities." Subsection (A) establishes the requirement to disclose due diligence findings; subsection (B) requires that third-party due diligence providers deliver a certification to any NRSRO rating the ABS in question; and subsection (C) in turn requires the Commission to establish the format and content of the certification "to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information *necessary for a nationally recognized statistical rating organization to provide an accurate rating*" (emphasis added). ABASA believes that based on the language and structure of Section 932, it is clear that the provisions of Section15E(s)(4) must be applied together and that the disclosure of due diligence reports was intended to apply to reports provided to NRSROs. Therefore, ABASA strongly urges the Commission to amend its proposal accordingly.

Conclusion

For the reasons stated above, ABASA agrees that the Commission should at this time refrain from specifying a minimum standard for review or the types of review required, but should state in the final rule that sampling of assets is a permissible technique for conducting due diligence, and that the reports to be disclosed relate to the quality of the underlying assets. ABASA strongly urges the Commission to limit the disclosure of the findings and conclusions of third-party due diligence reports under Section 932 to those provided to NRSROs in connection with rating an ABS transaction and that such disclosure requirements not be applied more broadly to the due diligence conducted by issuers or third-parties acting on their behalf.

If you have any questions about the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Cristeena G. Naser
Associate General Counsel
ABA Securities Association