November 15, 2010

EXECUTIVE DIRECTOR

Cynthia M. Fornelli

GOVERNING BOARD

Chairman
James S. Turley, Chairman and CEO
Ernst & Young LLP

Vice Chair
Michele J. Hooper, President and CEO
The Directors' Council

Vice Chair
Barry C. Melancon, President and CEO
AICPA

Charles M. Allen, CEO
Crowe Horwath LLP

Stephen Chipman, CEO and Executive Partner
Grant Thornton LLP

Harvey J. Goldschmid, Dwight Professor of Law
Columbia University

Robert E. Moritz, Chairman and Senior Partner
PricewaterhouseCoopers LLP

Lynn S. Paine, Professor of Business
Administration and Senior Associate Dean,
Director of Faculty Development
Harvard Business School

Barry Salzberg, CEO
Deloitte LLP

Dave Scudder, Managing Partner
McGladrey & Pullen, LLP

John B. Veihmeyer, U.S. Chairman and CEO
KPMG LLP

Jack Weisbaum, CEO
BDO USA, LLP

Office of the Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: File No. S7-26-10: Proposed Rules – Issuer Review of Assets in Offerings of Asset-Backed Securities

Dear Office of the Secretary:

The Center for Audit Quality (CAQ) is an autonomous public policy organization dedicated to enhancing investor confidence and public trust in the global capital markets. The CAQ fosters high quality performance by public company auditors, convenes and collaborates with other stakeholders to advance the discussion of critical issues requiring action and intervention, and advocates policies and standards that promote public company auditors' objectivity, effectiveness and responsiveness to dynamic market conditions. Based in Washington, D.C., the CAQ is affiliated with the American Institute of Certified Public Accountants (AICPA). The CAQ appreciates the opportunity to respond to the Securities and Exchange Commission's (SEC or the Commission) Proposed Rules related to *Issuer Review of Assets in Offerings of Asset-Backed Securities* (the Proposal). This letter represents the observations of the CAQ, but not necessarily the views of any specific firm, individual or CAQ Governing Board member.

Summary

The provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Act) related to asset-backed securities (ABS) were in response to the significant losses holders of ABS suffered during the financial crisis and the realization that many investors were not fully aware of the risk in the underlying mortgages (or other financial instruments) within the pools of securitized assets. We believe that Sections 945 and 932 of the Act were intended to provide additional information to potential investors related to the credit quality of the assets underlying the ABS to better inform investment decisions. Accountants are often engaged by issuers to perform procedures on information disclosed in the offering documents for ABS. Like traditional comfort letters, reports of findings from performing such procedures, prescribed by the underwriter or issuer, are principally designed for the limited purpose of providing the underwriter with evidence to support the discharge of its due diligence responsibilities under the Securities Act of 1933 related to disclosures in the ABS offering document, as opposed to assisting its evaluation of the credit quality of the assets underlying the ABS. Accordingly, we do not believe that the results of such procedures by

accountants would provide any additional information to investors to assist in the evaluation of the credit quality of the assets underlying the ABS. Therefore, we do not believe that accountants' reports provided to underwriters and issuers in connection with performing such procedures should be included within the scope of the Commission's Proposed Rule 193 related to the review of the assets underlying registered ABS offerings or Proposed Rule 15Ga-2 in connection with both registered and unregistered offerings of ABS.

The remainder of this letter provides further detail of the rationale for this perspective in order to inform the Commission's evaluation of whether such reports by accountants should be included within the scope of Proposed Rule 193 related to the review of assets and the entities who should be considered a "third party engaged for performing a review." We also provide views on the scope of Proposed Rule 15Ga-2 with respect to the services typically performed by accountants and on general independence considerations related to third-party providers of reviews. Finally, we provide perspective on the interaction of this rule-making with other rule-making activities by the SEC and others related to ABS.

Proposed Rule 193

Proposed Rule 193 would require each issuer of ABS to perform a review of the assets underlying registered ABS offerings and disclose the nature of such a review. However, the Proposal does not define what constitutes a review, or provide a minimum level of review or prescribe procedures that must be performed as part of such review. Accountants are often engaged by issuers to perform certain procedures on information included in the offering documents related to ABS and report their findings to the issuer and underwriter. A brief discussion of these services is included below, as well as our perspective regarding their relevance to our understanding of the underlying intent of the Act and Proposed Rule 193.

Description of Typical Services Provided

As mentioned above, accountants often are engaged by issuers to perform agreed-upon procedures on information included in an ABS offering document. These procedures can be broadly categorized into three areas, of which accountants can be engaged to perform all or a combination, depending on the circumstances.

Data tape to loan file comparison
Typically, a computer readable file containing detailed data about each financial asset underlying a particular offering is maintained by the issuer. Accountants may perform procedures related to information included in the offering documents that involve comparing either a sample or all of the information included in the data file to the source documents, and reporting any differences. For example, in a mortgage loan securitization, accountants often will trace information included in the data file back to loan documents and report any inconsistencies. However, this does not include any procedures to confirm the accuracy of any information contained within the loan file. Instead, the accountant's procedures consist solely of comparing the information included in the data file to source documents.

Recalculate projected future cash flows due to investors
Accountants are engaged to recalculate the projected future cash flows that are included in the offering document, which are presented under a number of assumed scenarios. These procedures typically consist of comparing the outputs of the calculations performed by the issuer to the independent calculations performed by the accountant.

Activities performed on other information included in the offering document
These activities generally include calculating summary statistics from the information contained in the computer readable data file and comparing them to information prepared by the issuer and included in the offering document. This can include, for example, disclosures related to the average coupon rates of loans underlying the securities, their average remaining term as well as other information related to the geographic concentration of the loans underlying the securities. In addition, these activities can include tracing various information included in the offering document to other source documents (for example, if servicing history information is disclosed, accountants may be asked to agree the information to servicer reports from which the information was derived).

As illustrated above, the services provided by accountants typically consist of agreeing information back to source documents that provide the foundation for disclosures in the offering documents or recalculating the information included in the offering documents for accuracy. These services are not focused on verifying the accuracy of information contained within the source documents (e.g., verifying information related to income levels in mortgage loan documents to income tax records or W-2s) or providing any evaluation or assurance regarding the credit quality of the underlying assets, adherence to underwriting standards or compliance of the credit origination with applicable laws and regulations.[1]

Nature of the Engagement

The activities described above are conducted pursuant to agreed-upon procedures engagements in accordance with AICPA Statements on Standards for Attestation Engagements, AT Section 201, *Agreed-Upon Procedures Engagements*. Such engagements require the underwriter or issuer to specify the particular procedures to be performed by the accountant and to take responsibility for the sufficiency of such procedures for their particular purpose. Such engagements are efficient and effective for underwriters or issuers due to the fact that they can tailor the particular procedures to be performed by the accountant based on the facts and circumstances, including consideration of other procedures performed by the underwriter or issuer. Integral to the performance of the engagements is the fact that the underwriter or issuer is responsible for defining the criteria to be used in the determination of findings, which ultimately dictates the content of the accountant's report. Accordingly, the accountant does not render any opinion but rather provides a detailed description of the procedures performed and the related findings. The accountant's report typically contains language illustrating the following limitations:

- The sufficiency of the procedures performed is solely the responsibility of the addressees of the report. Consequently, we make no representation regarding the sufficiency of the procedures we performed, as described [in the report], either for the purpose for which this report has been requested, or for any other purpose.

[1] Traditionally, accountants have not been engaged to perform procedures related to the credit quality of specific assets underlying ABS.

601 13th Street NW, Suite 800N, Washington, DC 20005, (202) 609-8120 www.thecaq.org

- We were not engaged to, and did not, perform an examination, the objective of which would be the expression of an opinion on the [subject matter of the engagement]. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.
- We did not obtain written representation concerning matters relating to the completeness and accuracy of the information provided to us. In addition, we have not verified the completeness and accuracy of the information provided to us by [underwriter and/or issuer] which we used in performing our procedures.

Given the responsibilities of the underwriter and issuer in these engagements, the operative AICPA professional standards require that the accountant's report of findings be limited to only those parties who have taken responsibility for the sufficiency of the procedures performed. [2] This requirement is intended to prevent other parties from placing reliance on the report for purposes other than those specifically intended by those who engaged the accountant and determined the nature and scope of the procedures. As a result, the accountant's report includes the following language:

- This report is intended solely for the information and use of [names of specified parties who agreed to the procedures] and is not intended to be and should not be used by anyone other than these specified parties.

Relevance of Activities to the Intent of the Act and the SEC's Proposed Rule 193

As noted above, we believe that the provisions of the Act related to ABS were in response to the realization that many investors who experienced losses during the financial crisis were not fully aware of the risks in the quality of the underlying mortgages (or other financial instruments) within the pools of securitized assets and were intended to provide investors with additional information with which to evaluate such risk. The Committee Report of the U.S. Senate Committee on Banking, Housing and Urban Affairs related to the Act references congressional testimony provided by Professor John Coffee and indicates that Section 945 of the Act was influenced by Professor Coffee's perspectives.[3] In his testimony, Professor Coffee noted that there was a lack of due diligence performed on the assets underlying ABS.[4] Due diligence, as described by Professor Coffee, relates to procedures performed on assets included in the portfolio, including, for example, "checking credit scores and documentation" and references services provided by "due diligence firms" who were engaged to perform procedures to verify the quality of collateral included in the offering. Such services often included, for example, engaging firms to perform detailed reviews of loan documentation, applying prescribed underwriting criteria to such loans and reporting any loans that were included in the securitization pool that did not comply with the underwriting requirements. Disclosure of the results of such procedures would appear to provide investors with improved information about the nature and quality of the assets underlying the ABS.

[2] Alternatively, accountants could be engaged to provide a letter pursuant to AU 634, *Letters for Underwriters and Certain Other Requesting Parties*, with similar limitations on distribution as described in this section.
[3] Wall Street Reform Bill – Committee Report, available at http://banking.senate.gov/public/_files/Comittee_Report_S_Rept_111_176.pdf

[4] *Enhancing Investor Protection and the Regulation of Securities Markets*, Working Paper available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1372194

We note that the Proposal appears to take a similar view of the nature of due diligence procedures intended to be included in the review of assets. For example, question 4 of the Proposal requests comment on the type of review that should be performed and includes a number of examples of potential procedures that could be required in such a review. Such procedures include determining whether the underlying assets meet the underwriting criteria as described in the offering document, whether loans have been originated in compliance with applicable laws and a review of the accuracy of the property values reported by the originators for the underlying collateral. All of such procedures would appear to be intended to provide potential investors with information to evaluate the credit quality of the underlying assets.

Accordingly, we believe that providing potential investors with additional information with which to evaluate the credit quality of the assets underlying the ABS is consistent with the intent of the Act. Such procedures are distinct from other procedures performed for the purposes of supporting a due diligence defense under Section 11 and Section 12(a)(2) of the Securities Act of 1933 with respect to disclosures in the registration statement and prospectus. We believe that the services provided by accountants, which are intended to provide evidence to the underwriter to support its due diligence responsibilities related to disclosures in the offering document, do not provide additional information to assist investors in evaluating the underlying credit quality of the assets given that the primary objective of the accountants is to assist the underwriter or issuer in evaluating the accuracy of the disclosures in the offering document.

Therefore, we do not believe that procedures performed by accountants pursuant to agreed-upon procedures engagements as described above should be included within the scope of the review as contemplated by the Proposal. The inclusion of such procedures within the scope of Proposed Rule 193 would appear to be inconsistent with the intent of the Act. In addition, including these activities within the scope of Proposed Rule 193 would necessitate the inclusion of the accountant's report in an offering document, which would be prohibited under current professional standards and would likely prevent accountants from performing such procedures. Therefore, we recommend the SEC explicitly clarify in the final rule that accountant's agreed-upon procedures engagements of the type described above do not address the credit quality of the underlying assets in an ABS and do not fall within the scope of Rule 193.

Proposed Rule 15Ga-2

In addition, Proposed Rule 15Ga-2 (pursuant to Section 932 of the Act), would require issuers and underwriters of any ABS to disclose the findings and conclusions of any review performed by a third party that was hired to conduct a review of the pool assets. Similar to Proposed Rule 193, it is unclear whether an accountant's typical agreed-upon procedures engagement would fall within the scope of Proposed Rule 15Ga-2.

As discussed above, we do not believe that the typical procedures performed by accountants constitute "due diligence" or a "review of pool assets" within the context of the Proposal or the intent of the Act and do not provide information that assists investors in evaluating the credit quality of the assets underlying an ABS. In addition, given that the procedures performed by accountants are primarily requested by issuers and underwriters to assist them in evaluating the accuracy of the information contained in the offering documents, any items identified through the performance of such procedures typically relate to calculation errors or data transfer errors. Typically, the issuer corrects any related errors in the disclosures in the offering documents.

Accordingly, were such engagements concluded to fall within the scope of Proposed Rule 15Ga-2 (or Proposed Rule 193), the usefulness of these procedures and related findings to investors would be minimal.

Consistent with our recommendation with respect to Rule 193, we recommend the SEC explicitly clarify in the final rule that accountant's agreed-upon procedures engagements of the type described above do not involve a review of pool assets in an ABS and do not fall within the scope of Rule 15Ga-2.

Independence Considerations Related to Third-Party Due-Diligence Provider

As proposed, Rule 193 would permit an issuer either to directly perform or employ a third party to perform the required asset pool review. The related questions of independence and conflict mitigation are not unique to situations in which third parties are involved in performing such a review. We note that, as a general matter, an issuer cannot be independent or conflict-free with respect to itself. As third-party involvement is not required or advocated by the proposed rule (or even contemplated by the plain text of Section 945), we believe that such services could be performed by third parties regardless of their independence from the issuer. In addition, we do not believe the performance of such procedures by third parties would necessarily impair their independence with respect to the issuer. However, if the Commission nevertheless concludes that the concepts of independence and/or conflict mitigation are important to the asset pool review process, we believe the Commission should consider seeking public input on any such provisions before adoption.

****

We appreciate the opportunity to comment on the Proposal and would welcome the opportunity to respond to any questions you may have regarding any of our comments and recommendations.

Sincerely,

Cynthia M. Fornelli
Executive Director
Center for Audit Quality

cc: SEC

Chairman Mary Schapiro
Commissioner Luis Aguilar
Commissioner Kathleen L. Casey
Commissioner Troy Paredes
Commissioner Elise B. Walter
James L. Kroeker, Chief Accountant