

November 12, 2010

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

File No.: S7-24-10

Re: Realpoint LLC¹ (“Realpoint”) Comments to Proposed Rule 17g-7 of the Proposed Rules²

Dear Ms. Murphy:

Thank you for the opportunity to comment on the Proposed Rules. Realpoint’s comments herein focus on Proposed Rule 17g-7.³ Realpoint believes that Proposed Rule 17g-7 should be clarified to provide detailed, practical guidance as to how NRSROs may satisfy their obligations to disclose the two descriptions that an NRSRO is required to disclose under Section 943⁴ (herein, “Section 943 Descriptions”).

Summary

NRSROs should be permitted to satisfy their Section 943 obligations by incorporating by reference specific portions of offering materials that comprise Section 943 Descriptions. Only the solicited, issuer-paid NRSROs should be required to disclose Section 943 Descriptions and these disclosure obligations should only apply to pre-sale reports for new issuances of asset-backed securities (“ABS”).

¹ Realpoint, a Nationally Recognized Statistical Ratings Organization (“NRSRO”), presently primarily specializes in commercial mortgage-backed securities (“CMBS”) securities ratings, research, surveillance services, and data. Realpoint’s comments herein are primarily made in the context of CMBS issuances but are equally applicable to RMBS and other forms of ABS.

² Proposed Rule, Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Securities and Exchange Commission Release Nos. 33-9148; 34-63029; File No. S7-24-10 (October 4, 2010), 75 Fed. Reg. 62718 (October 13, 2010) [herein, the “Proposed Rules”].

³ Proposed Rule 17g-7 requires an NRSRO to include in any report accompanying an ABS credit rating “a description of the representations, warranties and enforcement mechanisms available to investors and a description of how they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.” Proposed Rules at page 62727-62728. Proposed Rule 17g-7 is substantially a restatement of the requirements of Title IX, Subtitle D, Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (herein, “Section 943”). See *Id.*; see also Proposed Rules at page 62719. Proposed Rule 17g-7 applies to both registered and unregistered ABS offerings. Proposed Rules at page 62728. Proposed Rule 17g-7 applies not only to final credit ratings but also “any expected or preliminary credit rating issued by an NRSRO” such as pre-sale reports. *Id.* The SEC “intend[s] for the term ‘preliminary credit rating’ to include any rating, any range of ratings, or any other indications of a rating used prior to the assignment of an initial credit rating for a new issuance. *Id.*, fn. 65 (citing generally Credit Ratings Disclosure, SEC Release No. 33-9070 (October 7, 2009) [74 FR 53086]).

⁴ See fn. 3 above.

Securitization costs will unnecessarily increase if NRSROs are required to do more than disclose issuer-prepared Section 943 Descriptions by reference to ABS offering materials, and NRSROs are thus required to develop their own, separate Section 943 Descriptions based on ABS offering materials and terms. Additional, unnecessary securitization costs will be incurred if unsolicited, investor-paid pre-sale reports or surveillance ratings must include Section 943 Descriptions. Increased costs of securitization increase the cost of the underlying financing to borrowers and consumers.

Also, requiring NRSROs to develop their own, separate Section 943 Descriptions based on ABS offering materials and terms is not consistent with certain goals and policies of Congress and the SEC with respect to ABS, namely, the goals to reduce undue reliance on credit ratings and to promote independent investor analysis and the SEC's policies and goals underlying Rule 17g-5.

As a related consideration, NRSROs should not be required to develop their own, separate Section 943 Descriptions based on ABS offering materials and terms because those disclosures may then be misconstrued as legal advice or a legal opinion or structuring advice or recommendations. NRSRO disclosures of Section 943 Descriptions should be permitted to be accompanied by appropriate disclaimers regarding the source of the information and other matters, for example, that the NRSRO is not offering or providing any legal advice or a legal opinion or any structuring advice or recommendations to any person for any purpose in such report and that it is not opining on the sufficiency of the representations, warranties and enforcement mechanisms for the subject ABS or for any similar securities, or any industry standards against which such representations, warranties and enforcement mechanisms were compared.

Finally, Section 943 Descriptions of how representations, warranties and enforcement mechanisms available to investors differ from those of other securities should be made based on a comparison to certain widely-recognized industry standards rather than to the offering terms of certain other securities. Section 943 Descriptions in offering materials would need to disclose which specific industry standards were used for that purpose. The use of industry standards, rather than the offering terms of other securities, as the benchmark for this aspect of Section 943 Descriptions will provide a more consistent presentation to investors that can be prepared on a more cost-effective basis. Section 943 Descriptions of how representations, warranties and enforcement mechanisms differ from those of other securities should be permitted to be presented in the form of a "blackline" comparison. This approach would be cost-effective and would permit and promote independent investor analysis of those differences and whether those differences were material to the investor's investment decision. This approach would also eliminate concerns that NRSRO-prepared Section 943 Descriptions comprise legal advice or a legal opinion or any structuring advice or recommendations.

Limitation of Disclosures to Incorporation by Reference of Offering Materials

NRSROs should be permitted to refer to and incorporate by reference (in any ABS credit rating report contemplated by Proposed Rule 17g-7 or in the forthcoming SEC form to accompany the publication of any ABS credit rating⁵) portions of ABS offering materials⁶ that comprise

⁵ The SEC requested comment as to whether the "form to accompany the publication of each credit rating that discloses certain information" should include the disclosures about representations,

Section 943 Descriptions. For NRSROs to be able to take this approach, and not be required to develop their own, separate Section 943 Descriptions based on ABS offering materials and terms, the SEC's ABS offering rulemaking efforts⁷ must require issuers to include Section 943 Descriptions in ABS offering materials. Although Section 943 assigns to NRSROs the responsibility to disclose Section 943 Descriptions, Section 943 and, by extension, Proposed Rule 17g-7 should not be interpreted as having shifted from issuers to NRSROs disclosure obligations that are traditionally issuer obligations and that are more efficiently addressed by the issuer rather than each NRSRO rating the issuer's ABS offering. Inefficiencies that directly increase the cost of securitization indirectly increase the cost of the underlying financing to borrowers and consumers.

The issuer-prepared Section 943 Descriptions would need to be expressly delineated as such in the ABS offering materials and sufficient to permit NRSROs to comply with Proposed Rule 17g-7 by incorporation by reference thereto. The issuer would be required to provide both aspects of the descriptions required under Section 943, including a description of the offering-specific exceptions to the issuer's representations, which exceptions are typically listed on schedules to the representation, because all such exceptions, are, by definition, a difference from industry standards or from representations and warranties made with respect to other securities. (As discussed below, the specific representations, warranties and enforcement mechanisms of an offer should be compared to certain widely-recognized industry standards rather to the terms of certain other offers.)

The issuer-prepared Section 943 Descriptions would also be part of the issuer's Rule 17g-5 disclosures pursuant to which an ABS issuer makes available to all NRSROs the same information that the issuer provides to the issuer-paid NRSROs for the purpose of determining the initial credit rating.⁸ If NRSROs are required to do more than disclose issuer-prepared Section 943 Descriptions by reference to ABS offering materials, there will be a duplication of effort as among solicited, issuer-paid NRSROs and also as among unsolicited, investor-paid NRSROs who seek to issue pre-sale reports based on the offering materials made available to all NRSROs under the requirements of Rule 17g-5.⁹ For Rule 17g-5 information to be used by unsolicited NRSROs, the financial feasibility of unsolicited, investor-paid ratings for a new issuance on a pre-sale basis needs to be fostered and not subject to additional burdens. Rules

warranties and enforcement mechanisms required under proposed Rule 17g-7." Proposed Rules at page 62728.

⁶ The SEC requested comment as to whether to "allow NRSROs to satisfy the requirement to disclose representations, warranties and enforcement mechanisms by referring to disclosure about those matters that is included in a prospectus prepared by an issuer." *Id.*

⁷ The SEC recently proposed increased disclosure requirements under Regulation AB. Proposed Rule, Asset-Backed Securities, Securities and Exchange Commission Release Nos. 33-9117; 34-61858; File No. S7-08-10 (April 7, 2010), 75 Fed. Reg. 23328 (May 3, 2010) [herein, "Asset-Backed Securities"].

⁸ To rate a new issuance of ABS, the issuer-paid NRSRO must obtain a representation that the issuer, sponsor, or underwriter will: (a) maintain the required information at an identified password-protected website; (b) provide access to such website to any NRSRO that provides it with a copy of the required certification; and (c) post on such website all information the issuer, sponsor, or underwriter provides to the NRSRO, or contracts with a third party to provide to the NRSRO for the purpose of: (i) determining the initial credit rating for the security; or (ii) undertaking credit rating surveillance on the security. 17 C.F.R. § 240.17g-5(a)(3).

⁹ The SEC requested comment as to whether NRSROs will be able to comply with Proposed Rule 17g-7 for unsolicited credit ratings issued based on information made available in connection with Rule 17g-5. Proposed Rules at page 62728.

that increase the cost of pre-sale reports issued by unsolicited, investor-paid NRSROs are contrary to the SEC's policies and goals underlying Rule 17g-5.

NRSROs will need to include appropriate disclaimers with respect to information presented in any ABS credit rating report or in the SEC form to accompany the publication of any ABS credit rating. The NRSRO should be permitted to state that it is merely disclosing the issuer-prepared Section 943 Descriptions by reference to offering materials. The NRSRO may wish to state that it is not offering or providing any legal advice or any legal opinion or any structuring advice or recommendations¹⁰ to any person for any purpose in such report and that it is not opining on the sufficiency of the representations, warranties and enforcement mechanisms for the subject ABS or for any similar securities, or any industry standards against which such representations, warranties and enforcement mechanisms were compared.

The foregoing suggested clarifications of Proposed Rule 17g-7 are not inconsistent with the SEC's goals with respect to ABS to "reduce the likelihood of undue reliance on credit ratings" and "to promote independent analysis of ABS by investors rather than reliance on credit ratings."¹¹

Limitation of Disclosures to Credit Rating Reports for New Issuances of ABS

Arguably, the primary intent of Section 943 is to require additional disclosures of the offering terms for new issuances of ABS.¹² Because NRSROs issue credit rating reports under a variety of contractual arrangements, the SEC should use Proposed Rule 17g-7 to limit Section 943 disclosure requirements to pre-sale reports¹³ for new issuances of ABS.

With respect to solicited, issuer-paid ratings for a new issuance, the scope of services is determined in part by the regulatory requirements of the offering process and in part by investors' requirements and demands. Under current practices for new issuances of ABS, the pre-sale report is the only report issued by the solicited, issuer-paid NRSROs. Their final ratings letter will reference the pre-sale report but there is no final, supplemental or other report that supersedes the pre-sale report.

¹⁰ An NRSRO is prohibited from issuing or maintaining a credit rating with respect to an obligor or security if the NRSRO made recommendations to the obligor or the issuer, underwriter, or sponsor of the security about the corporate or legal structure, assets, liabilities, or activities of the obligor or issuer of the security. 17 C.F.R. § 240.17g-5(c)(5).

¹¹ The SEC's "proposals are intended to provide investors with timely and sufficient information, . . . reduce the likelihood of undue reliance on credit ratings, and help restore investor confidence in the representations and warranties regarding the assets." *Asset-Backed Securities* at pages 23330-23331.

¹² See Joint Explanatory Statement of the Committee of Conference in the Conference Report (111-517) to accompany H.R. 4173, page 872 ("Subtitle D also requires enhanced disclosure by issuers of asset-backed securities, including data related to the underlying loans or assets.") (emphasis added).

¹³ "In ABS transactions, pre-sale reports are typically issued by an NRSRO at the time the issuer commences the offering and typically include an expected or preliminary credit rating and a summary of the important features of a transaction. Disclosure at the time pre-sale reports are issued is particularly important to investors, since such reports provide them with important information prior to the point at which they make an investment decision." Proposed Rules at page 62728.

Thus, although Proposed Rule 17g-7 includes a note¹⁴ intended to clarify that “a ‘credit rating’ includes any expected or preliminary credit rating issued by a” NRSRO,¹⁵ that note, and thus the applicability of Proposed Rule 17g-7, should be limited to new issuances of ABS.

NRSROs should then be permitted to refer to and incorporate by reference (in any ABS credit rating report contemplated by Proposed Rule 17g-7 or in the forthcoming SEC form to accompany the publication of any ABS credit rating) in their credit rating reports Section 943 Descriptions or other disclosures or information previously provided by the NRSRO in its pre-sale report or other credit rating report. To permit NRSROs to incorporate by reference in a credit rating report their own disclosures from a prior credit rating report is consistent with comments above regarding the incorporation by reference in a credit rating report of portions of offering materials prepared by the issuer. As discussed above, requiring issuers to prepare Section 943 Descriptions would be a cost-effective approach to implementing Section 943 Descriptions for new issuances of ABS.

With respect to unsolicited, investor-paid ratings for new issuances of ABS, the scope of services is determined by the agreement between the investor and the NRSRO hired by the investor to rate the new issue on a pre-sale basis. Investors will want to limit the costs of pre-sale ratings that they directly purchase. Investors will not want to pay for disclosures that they receive as part of the ABS offering materials or the solicited, issuer-paid ratings. Investors receive little or no benefit from having unsolicited investor-paid NRSROs develop or even just disclose Section 943 Descriptions for new issuances of ABS because the same information would have been disclosed by the ABS offering materials or the solicited, issuer-paid ratings. Requiring investors to pay unsolicited investor-paid NRSROs to develop or even just disclose Section 943 Descriptions would result in an unnecessary and unwarranted additional cost.

With respect to surveillance ratings, the considerations include those noted above for unsolicited, investor-paid ratings for new issuances of ABS. Another reason that surveillance ratings need not include Section 943 Descriptions is that, while surveillance ratings may migrate after issuance, the original Section 943 Descriptions remain in effect and will not change after issuance.

If, for unsolicited, investor-paid pre-sale reports or for surveillance ratings, investors want unsolicited, investor-paid NRSROs to include Section 943 Descriptions, investors can work directly with the NRSROs to determine the appropriate scope of service and appropriate fees for those services.

Limitation of Disclosures to Comparison to Industry Standards

With respect to the proposed comparison to “similar securities,”¹⁶ to instead base the comparison on certain “industry standards”¹⁷ will eliminate both the need to define “similar

¹⁴ “Section 943, by its terms, applies to any report accompanying a credit rating for an ABS transaction, regardless of when or in what context such reports and credit ratings are issued. Proposed Rule 17g-7 is intended to reflect the broad scope of this congressional mandate. In addition, we are proposing a note to the proposed rule which would clarify that for the purposes of the proposed rule, a ‘credit rating’ would include any expected or preliminary credit rating issued by an NRSRO.” *Id.*

¹⁵ *Id.*

¹⁶ The SEC requested comment as to whether and how to define “similar securities.” *Id.*

securities” and the potential for inconsistent results based on inconsistent determinations of the appropriate benchmark. The use of industry standards, rather than the offering terms of other securities, as the benchmark for this aspect of Section 943 Descriptions, will provide a more consistent presentation to investors that can be prepared on a more cost-effective basis. The SEC could consider taking the approach that the model standards promulgated by a few, rather than just one, organization comprise the permitted benchmark for purposes of the comparison. The offering materials would need to disclose which specific industry standards were used for that offer.

With respect to single-borrower CMBS, or conduit CMBS with a single originator, the same comparison could be made, i.e., to industry standards, but the representations, warranties and enforcement mechanisms for that type of asset pool may differ from those of a more diverse asset pool.

Finally, Section 943 Descriptions of how representations, warranties and enforcement mechanisms differ from those of other securities should be permitted to be presented in the form of a “blackline” comparison, which highlights, word-by-word, the offering terms’ additions to or deletions from the industry standards. This approach would be cost-effective and would permit and promote independent investor analysis of those differences and whether those differences were material to the investor’s investment decision. This approach would also eliminate concerns that NRSRO-prepared Section 943 Descriptions comprise legal advice or a legal opinion or any structuring advice or recommendations.

Thank you for the opportunity to comment on the Proposed Rules. Please do not hesitate to contact us if you have any questions.

Very truly yours,



Robert Dobilas,
CEO and President,
Realpoint LLC

¹⁷ The SEC requested comment as to whether to “require the proposed disclosure to include comparisons to industry standards in addition to similar securities.” *Id.*