

**Securities Industry and Financial Markets Association
(SIFMA)**

**Sample Rule 15Ga-2 and 17g-10 Provisions
for Engagement Letters and
Underwriting, Initial Purchase and Placement Agency Agreements
in ABS Offerings**

**June 25, 2015
v1.2**

The attached sample provisions, which are the result of discussions by the SIFMA dealer working group on the NRSRO due diligence rules, are intended to be used by dealers acting as underwriters, initial purchasers and placement agents in drafting provisions dealing with the Rules 15Ga-2 and 17g-10 for their engagement letters with ABS sponsors and depositors, and for the related underwriting, securities purchase and placement agency agreements. These are sample provisions, not forms, and as such should be reviewed by counsel to ensure that they are consistent with the existing agreement language and definitions, and that they reflect the dealer's individual business determination as to how the identified issues should appropriately be handled.

For more information, please contact Chris Killian of SIFMA at 212-313-1126 or ckillian@sifma.org.

Engagement Letter between Sponsor/Depositor and Underwriter/Initial Purchaser/Placement Agent (Long Form):

Section [____]. Third-Party Due Diligence Reports.

(a) [The Company [will engage] [has engaged] [describe contemplated engagements of third-party due diligence services providers].] OR [The Company will cooperate with the [Underwriter/Initial Purchaser/Placement Agent] in determining the extent of any engagements of third-party due diligence service providers that will be undertaken with respect to the transaction contemplated by this Agreement.] In connection therewith, the Company will ensure that:

- (i) the [Underwriter/Initial Purchaser/Placement Agent] receives a copy of each report generated as a result of any such engagement [or as a result of the engagement of any other third party to provide due diligence services within the meaning of Rule 17g-10(d)(1) under the [Exchange Act] with respect to the transaction contemplated by this Agreement] (each, a “Third-Party Due Diligence Report”);
- (ii) the [Underwriter/Initial Purchaser/Placement Agent] is entitled to rely on [each Third-Party Due Diligence Report] OR [the following Third-Party Due Diligence Reports: [_____]]; and
- (iii) the [Underwriter/Initial Purchaser/Placement Agent] will not be required to compensate, indemnify, release or enter into any other agreement with any such provider as a condition to its reliance on that provider’s Third-Party Due Diligence Report[, unless and to the extent agreed by the [Underwriter/Initial Purchaser/Placement Agent] in its sole discretion].

(b) [If the [Underwriter/Initial Purchaser/Placement Agent] notifies the Company that the [Pricing Date] is expected to occur on or after June 22, 2015, then with respect to all Third-Party Due Diligence Reports,] OR [If any third-party due diligence services will be completed on or after June 15, 2015, then with respect to all related Third-Party Due Diligence Reports,] OR [With respect to all Third-Party Due Diligence Reports,] the Company also will ensure that:

- (i) the third-party due diligence services provider agrees to, in writing, and does, prepare and provide, together with its Third-Party Due Diligence Report, a certification on Form ABS Due Diligence-15E meeting all of the requirements of that form and of Rule 17g-10 (a “Form ABS Due Diligence-15E Certification”), at least [____] Business Days before the Pricing Date;¹

¹ NOTE: Under Rule 17g-10, the Form ABS Due Diligence-15E Certification is required to be delivered to any requesting NRSRO or the issuer/underwriter for posting on the 17g-5 website “promptly...after completion of the due diligence services.” This language reflects a conclusion that the appropriate time to provide it would be together with the related Third-Party Due Diligence Report.

- (ii) [describe any agreement as to how Third-Party Due Diligence Report and/or Form ABS Due Diligence-15E Certification will be used to prepare Form ABS-15G, *e.g.*, the summary of findings and conclusions expanded to reflect all findings and conclusions or the entire report to be filed, or how such agreements will be reached with third-party due diligence services providers];
- (iii) the Third-Party Due Diligence Report and related Form ABS Due Diligence-15E Certification are promptly delivered to each [NRSRO] that has provided the certification required by Rule 17g-10(c)(1) or (2) under the Exchange Act as required by Rule 17g-10(c), and are promptly posted on the [Rule 17g-5 Website] as required by Rule 17g-5(a)(3)(iii)(E); and
- (iv) the third-party due diligence services provider consents to the use of its [Third-Party Due Diligence Report and the related]² Form ABS Due Diligence 15E Certification in the preparation of a Form ABS-15G Due Diligence Report (as defined below) to be furnished on EDGAR as required by Rules 15Ga-2(a) and (c).

Section [___]. Reports on Findings and Conclusions of Third-Party Due Diligence Reports.

(a) [If the [Underwriter/Initial Purchaser/Placement Agent] notifies the Company that the [Pricing Date] is expected to occur on or after June 22, 2015, the] OR [The] Company agrees that all Third-Party Due Diligence Reports, whether obtained pursuant to Section [___] above or otherwise, will as [between] [among] the parties to this Agreement be deemed to have been obtained by the Company pursuant to Rules 15Ga-2(a) and (b). In connection therewith, the Company shall:

- (i) prepare one or more reports on Form ABS-15G (each, a “Form ABS-15G Due Diligence Report”) containing the findings and conclusions of each such report and meeting all other requirements of Rule 15Ga-2, any other rules and regulations of the Commission and the Exchange Act;
- (ii) provide a copy of the final draft of each Form ABS-15G Due Diligence Report to the [Underwriter/Initial Purchaser/Placement Agent] at least [___] Business Days before the earlier of (i) the deadline set forth in clause (iii) below, or (ii) the actual date that the Company furnishes such report to the [Commission] on EDGAR;
- (iii) furnish each Form ABS-15G Due Diligence Report to the [Commission] on EDGAR at least five [Business Days] before the Pricing Date as required by Rules 15Ga-2(a) and (c); and
- (iv) ensure that no portion of any Form ABS-15G Due Diligence Report contains any names, addresses, other personal identifiers or zip codes with respect to any individuals, or any other personally identifiable or other information that would be associated with an individual, including without limitation any “nonpublic

² NOTE: Whether to include here will depend on whether it will be used to prepare the Form ABS-15G.

personal information” within the meaning of Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999.

(b) If the [Underwriter/Initial Purchaser/Placement Agent] obtains or determines, in its sole discretion, that it may be deemed to have obtained any Third-Party Due Diligence Report with respect to the transactions contemplated by this Agreement that for any reason is not also obtained by the Company and otherwise dealt with pursuant to subsection (a) above, then if so directed by the [Underwriter/Initial Purchaser/Placement Agent], the Company will comply with subparagraph (a) above with respect to each such Third-Party Due Diligence Report identified by the [Underwriter/Initial Purchaser/Placement Agent], so long as a copy of such report is provided to the Company at least [] Business Days before the date set forth in clause (a)(ii) above.

(c) For the avoidance of doubt, and notwithstanding any other provision of this Agreement (including Section []³ of this Agreement and subsection (a) above), nothing in this Agreement shall prohibit or restrict the [Underwriter/Initial Purchaser/Placement Agent] from preparing and furnishing on EDGAR, on its own behalf, any Form ABS-15G Due Diligence Report as it deems advisable in its sole discretion with respect to any Third-Party Due Diligence Report.

[To be folded into any nonexclusive list of matters that will be dealt with by the Underwriting/Securities Purchase/Placement Agency Agreement:]

([]) the Company will represent, warrant and covenant that all requirements of Rules 15Ga-2 and 17g-10 under the [Exchange Act] have been or will be timely complied with in the manner contemplated by this Agreement, and timely compliance with all requirements of such rules to the satisfaction of the [Underwriter/Initial Purchaser/Placement Agent] will be a condition precedent to the obligations of the [Underwriter/Initial Purchaser/Placement Agent];

[To be folded into the indemnification provisions of the engagement letter:]

([]) any breach by the Company of its covenants contained in Sections [reference above sections]

[Also, ensure that the language describing the documents that are to be the subject of the indemnification provisions contains the following:]

any Form ABS-15G Due Diligence Report furnished on EDGAR with respect to the transaction contemplated by this Agreement, whether prepared or furnished by the Company, the [Underwriter/Initial Purchaser/Placement Agent] or otherwise, or any revision or amendment thereof or any supplement thereto

[And ensure that the indemnitees referenced in the indemnification provision include the following:]

³ NOTE: Cite to previous section on Third-Party Due Diligence Reports.

with respect to any Form ABS-15G Due Diligence Report prepared and furnished to the Commission by or on behalf of the [Underwriter/Initial Purchaser/Placement Agent], any signatory thereof, in his or her personal capacity (regardless of whether he or she signs such form on behalf of the [Underwriter/Initial Purchaser/Placement Agent] in its [corporate] capacity)

Engagement Letter between Sponsor/Depositor and Underwriter/Initial Purchaser/Placement Agent (Short Form):

Section [___]. Third-Party Due Diligence Services. [The Company [will engage] [has engaged] [describe contemplated engagements of third-party due diligence services providers].] All reports of third-party due diligence services providers will, as [between] [among] the parties to this Agreement, be deemed to have been obtained by the Company. The Company will ensure that all legal obligations with respect to any reports generated as a result of any such engagement pursuant to Rules 15gGa-2 and 17g-10 under the [Exchange Act] are timely complied with[, and that no portion of any Form ABS-15G contains any names, addresses, other personal identifiers or zip codes with respect to any individuals, or any other personally identifiable or other information that would be associated with an individual, including without limitation any “nonpublic personal information” within the meaning of Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999].

[To be folded into any nonexclusive list of matters that will be dealt with by the Underwriting/Securities Purchase/Placement Agency Agreement:]

([___]) the Company will represent, warrant and covenant that all requirements of Rules 15Ga-2 and 17g-10 under the [Exchange Act] have been or will be timely complied with in the manner contemplated by this Agreement, and timely compliance with such rules to the satisfaction of the [Underwriter/Initial Purchaser/Placement Agent] will be a condition precedent to the obligations of the [Underwriter/Initial Purchaser/Placement Agent];

[To be folded into the indemnification provisions of the engagement letter:]

([___]) any breach by the Company of its covenants contained in Section [reference above section]

[Also, ensure that the language describing the documents that are to be the subject of the indemnification provisions contains the following:]

any Form ABS-15G furnished on EDGAR with respect to the transaction contemplated by this Agreement, whether prepared or furnished by the Company, the [Underwriter/Initial Purchaser/Placement Agent] or otherwise, or any revision or amendment thereof or any supplement thereto

[And ensure that the indemnitees referenced in the indemnification provision include the following:]

with respect to any Form ABS-15G prepared and furnished to the Commission by or on behalf of the [Underwriter/Initial Purchaser/Placement Agent], any signatory thereof, in his or her personal capacity (regardless of whether he or she signs such form on behalf of the [Underwriter/Initial Purchaser/Placement Agent] in its [corporate] capacity)

Underwriting/Securities Purchase/Placement Agency Agreement (Long Form):

[To be added to list of representations, warranties and covenants:]

([___]) The Company has not engaged [and will not engage]⁴ any third-party due diligence services providers, except as specifically contemplated by the [Engagement Letter]. In connection with each such engagement:

- (i) the [Underwriter/Initial Purchaser/Placement Agent] received a copy of each report generated as a result of any such engagement (each, a “Third-Party Due Diligence Report”) [to date, and the Company will ensure that it receives a copy of each such report generated after the date hereof]⁵;
- (ii) the [Underwriter/Initial Purchaser/Placement Agent] is [or, to the extent not yet generated, upon such generation will be,]⁶ entitled to rely on [each Third-Party Due Diligence Report] OR [the following Third-Party Due Diligence Reports: [_____]]; and
- (iii) the [Underwriter/Initial Purchaser/Placement Agent] is and will not be required to compensate, indemnify, release or enter into any other agreement with any such provider as a condition to its reliance on that provider’s Third-Party Due Diligence Report[, unless and to the extent agreed by the [Underwriter/Initial Purchaser/Placement Agent] in its sole discretion].

([___]) [With respect to any third-party due diligence services completed on or after June 15, 2015 and the related Third-Party Due Diligence Reports] OR [With respect to all Third-Party Due Diligence Reports]:

- (i) the third-party due diligence services provider prepared and provided a certification on Form ABS Due Diligence-15E meeting all of the requirements of that form and of Rule 17g-10 (a “Form ABS Due Diligence-15E Certification”) [(or, if such services are not yet completed, the Company will ensure that the provider prepares and provides such a certification at least [_____] Business Days before the Pricing Date)]⁷;
- (ii) the Third-Party Due Diligence Report and related Form ABS Due Diligence-15E Certification were promptly delivered to each [NRSRO] that provided the certification required by Rule 17g-10(c)(1) or (2) under the Exchange Act as required by Rule 17g-10(c), and were promptly posted on the [Rule 17g-5 Website] as required by Rule 17g-5(a)(3)(iii)(E)[, or if any such report or

⁴ NOTE: Only for Placement Agency Agreement entered into before pricing.

⁵ NOTE: Only for Placement Agency Agreement entered into before pricing.

⁶ NOTE: Only for Placement Agency Agreement entered into before pricing.

⁷ NOTE: Only for Placement Agency Agreement entered into before pricing.

certification has not yet been prepared, the Company will ensure that it is promptly so delivered and posted]⁸; and

- (iii) the third-party due diligence services provider has consented to the use of its [Third-Party Due Diligence Report and the related]⁹ Form ABS Due Diligence 15E Certification in the preparation of a Form ABS-15G Due Diligence Report (as defined below) furnished on EDGAR as required by Rules 15Ga-2(a) and (c).

() All Third-Party Due Diligence Reports are [or will be]¹⁰, as [between] [among] the parties to this Agreement, deemed to have been obtained by the Company pursuant to Rules 15Ga-2(a) and (b). In connection therewith:

- (i) the Company prepared [or will prepare]¹¹ one or more reports on Form ABS-15G (each, a “Form ABS-15G Due Diligence Report”) containing the findings and conclusions of each such report and meeting all other requirements of Rule 15Ga-2, any other rules and regulations of the Commission and the Exchange Act;
- (ii) the Company provided [or will provide]¹² a copy of the final draft of each Form ABS-15G Due Diligence Report to the [Underwriter/Initial Purchaser/Placement Agent] at least [] Business Days before the earlier of (i) the deadline set forth in clause (iii) below, or (ii) the actual date that the Company furnished [or furnishes]¹³ such report to the [Commission] on EDGAR;
- (iii) the Company furnished [or will furnish]¹⁴ each Form ABS-15G Due Diligence Report to the [Commission] on EDGAR at least five [Business Days] before the [date hereof] [Pricing Date]¹⁵ as required by Rules 15Ga-2(a) and (c); and
- (iv) no portion of any Form ABS-15G Due Diligence Report contains [or will contain]¹⁶ any names, addresses, other personal identifiers or zip codes with respect to any individuals, or any other personally identifiable or other information that would be associated with an individual, including without limitation any “nonpublic personal information” within the meaning of Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999.

⁸ NOTE: Only for Placement Agency Agreement entered into before pricing.

⁹ NOTE: Whether to include here will depend on whether it was or will be used to prepare the Form ABS-15G.

¹⁰ NOTE: Only for Placement Agency Agreement entered into before pricing.

¹¹ NOTE: Only for Placement Agency Agreement entered into before pricing.

¹² NOTE: Only for Placement Agency Agreement entered into before pricing.

¹³ NOTE: Only for Placement Agency Agreement entered into before pricing.

¹⁴ NOTE: Only for Placement Agency Agreement entered into before pricing.

¹⁵ NOTE: Only for Placement Agency Agreement entered into before pricing.

¹⁶ NOTE: Only for Placement Agency Agreement entered into before pricing.

[To be added to list of conditions precedent:]

([___]) timely compliance with all requirements of Rules 15Ga-2 and 17g-10 under the [Exchange Act] to the satisfaction of the [Underwriter/Initial Purchaser/Placement Agent];

[To be folded into the indemnification provisions:]

([___]) any breach by the Company of its representations, warranties and covenants contained in Sections [reference above sections];

[Also, ensure that the language describing the documents that are to be the subject of the indemnification provisions contains the following:]

any Form ABS-15G Due Diligence Report furnished on EDGAR with respect to the transaction contemplated by this Agreement, whether prepared or furnished by the Company, the [Underwriter/Initial Purchaser/Placement Agent] or otherwise, or any revision or amendment thereof or any supplement thereto

[And ensure that the indemnitees referenced in the indemnification provision include the following:]

with respect to any Form ABS-15G Due Diligence Report prepared and furnished to the Commission by or on behalf of the [Underwriter/Initial Purchaser/Placement Agent], any signatory thereof, in his or her personal capacity (regardless of whether he or she signs such form on behalf of the [Underwriter/Initial Purchaser/Placement Agent] in its [corporate] capacity)

Underwriting/Securities Purchase/Placement Agency Agreement (Short Form):

[To be added to list of representations, warranties and covenants:]

() The Company has not engaged [and will not engage]¹⁷ any third-party due diligence services providers, except as specifically contemplated by the [Engagement Letter] All Third-Party Due Diligence Reports are [or will be]¹⁸, as [between] [among] the parties to this Agreement, deemed to have been obtained by the Company pursuant to Rules 15Ga-2(a) and (b). All legal obligations with respect to any reports generated as a result of any such engagement pursuant to Rules 15gGa-2 and 17g-10 under the [Exchange Act] have been [or will be]¹⁹ timely complied with[, and no portion of any Form ABS-15G contains [or will contain]²⁰ any names, addresses, other personal identifiers or zip codes with respect to any individuals, or any other personally identifiable or other information that would be associated with an individual, including without limitation any “nonpublic personal information” within the meaning of Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999].

[To be added to list of conditions precedent:]

() timely compliance with all requirements of Rules 15Ga-2 and 17g-10 under the [Exchange Act] to the satisfaction of the [Underwriter/Initial Purchaser/Placement Agent];

[To be folded into the indemnification provisions:]

() any breach by the Company of its representations, warranties and covenants contained in Sections [reference above sections];

[Also, ensure that the language describing the documents that are to be the subject of the indemnification provisions contains the following:]

any Form ABS-15G furnished on EDGAR with respect to the transaction contemplated by this Agreement, whether prepared or furnished by the Company, the [Underwriter/Initial Purchaser/Placement Agent] or otherwise, or any revision or amendment thereof or any supplement thereto

[And ensure that the indemnitees referenced in the indemnification provision include the following:]

with respect to any Form ABS-15G prepared and furnished to the Commission by or on behalf of the [Underwriter/Initial Purchaser/Placement Agent], any signatory thereof, in his or her personal capacity (regardless of whether he or she signs such form on behalf of the [Underwriter/Initial Purchaser/Placement Agent] in its [corporate] capacity)

¹⁷ NOTE: Only for Placement Agency Agreement entered into before pricing.

¹⁸ NOTE: Only for Placement Agency Agreement entered into before pricing.

¹⁹ NOTE: Only for Placement Agency Agreement entered into before pricing.

²⁰ NOTE: Only for Placement Agency Agreement entered into before pricing.