COLORADO PERA®

Colorado Public Employees' Retirement Association
Mailing Address: PO Box 5800, Denver, CO 80217-5800
Office Locations: 1300 Logan Street, Denver
1120 W. 122nd Avenue, Westminster
303-832-9550 • 1-800-759-PERA (7372)
www.copera.org

July 25, 2008

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via Email

Re: Proposed Rule for Nationally Recognized Statistical Rating Organizations File Number: S7-13-08)

Dear Ms. Morris,

Thank you for the opportunity to respond to the proposed regulations regarding the Nationally Recognized Statistical Rating Organizations (NRSROs). I am writing on behalf of the Colorado Public Employees' Retirement Association (Colorado PERA), which provides retirement and other benefits to 415,000 current and former employees of over 400 government and public entities in the state of Colorado. PERA is the 25th largest public pension plan in the U.S. with assets of $40 billion. I also serve on the Board of Directors of the Council of Institutional Investors, of which Colorado PERA is an active member. As such, we fully support the comment letter released by the Council of Institutional Investors regarding regulation of NRSROs. In addition to the Council's proposals and suggestions, we would like to provide the following comments regarding the proposed rules:

Proposed Amendments to Rule 17g-2– Disclosure of Records

1. **Requiring NRSROs to keep records of all rating actions taken and make them publicly available in an XBRL Interactive Data File on the NRSRO's Web site, no later than six months after the action was taken.**

   The SEC proposal to make publically available all records of rating actions in an XBRL Interactive Data File could be extremely beneficial to the investor community. Making a public record of rating actions will begin to develop a means for tracking NRSRO performance and holding them accountable for the manner in which they discharge their regulatory function. Additionally, by placing this information in an XBRL Interactive Data File, investors are much more easily able to compare ratings actions across agencies. This will not only allow greater ease for investors, but has the potential to increase competition amongst the NRSROs, which will promote and reward accuracy and diligence in the rating process.

   This proposal, while important for investors, does raise issues of sustainability for NRSROs relying on the investor-pay model. One firm, in its comment letter, said that the six-month deadline would essentially kill its business model and that a two-year time lag would better foster the development of similarly modeled NRSROs. The SEC proposes that required NRSROs make and retain a record showing all rating actions,

including: initial rating, upgrades, downgrades, and placements on watch for upgrade or downgrade, and the date of such actions identified by the name of the security or obligor and, if applicable, the CUSIP for the rated security or the Central Index Key (CIK) number for the rated obligor. While much of this information is delivered to subscribers, there is also further analysis delivered including in-depth credit profiles with strengths, weaknesses, circumstances that could cause the ratings to go up or down, and figures to support that information. It is the in-depth analysis that is at the core of the subscriber-pay models and materials would not be compromised by making the limited information called for by the rule available on a six-month delay. We support the proposed rule as we believe the proprietary value of the information is dissipated by the six- month delay. The six-month delay is prompt enough to allow investors to make reasonably timely comparisons.

This proposal also raises concerns for where on the firm's website this information will be placed. It is important that investors be able to access a firm's rating information easily, and by allowing audit firms to determine where on the website the information will be located could make it difficult to find. In a separate proposal, the SEC stated that it would like to create a website, similar to the EDGAR database, which would house information about the underlying assets that is provided to, and used by, the NRSROs to perform any ratings surveillance. It might be logical to place the XBRL rating information on this site, as it would benefit investors by being easily accessible in one place, and could also benefit the NRSROs by saving them the costs associated with reconfiguring their websites to provide this information.

2. **Requiring NRSROs to document the rationale for any significant out-of-model adjustments made to a rating for which a quantitative model would normally be a significant factor in the rating process (documentation would be made available only the SEC)**

Colorado PERA fully supports the SECs proposal to document any out-of-model adjustments made to a rating. We would ask, however, that is information be made publicly available in order to allow investors to use this information when assessing the need for additional investigation prior to making investment decisions.

Despite our support for this measure, we would ask for clarification of the proposed amendment. Under the SEC's proposal, "the requirement to make the record would be triggered in cases where a quantitative model is a substantial component of the credit ratings process for the type of obligor or security being rated and the output of the model would result in a materially different conclusion if the NRSRO relied on it without making an out-of-model adjustment." In order to effectively implement this proposal it is crucial that the SEC give guidance on the definition of "substantial" and "material" in the above context.

3. **Requiring public disclosure of all information provided by an issuer to an NRSRO that is used in determining an initial credit rating on a structured product.**

   This proposal, if enacted, would require NRSROs to provide a vast amount of disclosure to investors and to other NRSROs. While, as an investor, disclosure is of utmost importance, this rule should be further clarified and refined in order to ensure its effectiveness.

   Because NRSROs have not disclosed their processes publicly, individuals outside that community are unaware of the sources and information used in the ratings process. As such, specific recommendations as to the parties and inputs that should be involved in the disclosure process are unknown. It is important to first understand the ratings process before being able to comment on the specific inputs that should be required for disclosure.

Proposed Amendments to Rule 17g-5 – Disclosure and Management of Conflicts of Interest

1. **Requiring NRSROs to retain and make available to the SEC records of any complaints from issuers about the performance of an analyst involved in the ratings process**

   It is important that the Commission be able to evaluate the ways in which NRSROs address conflicts of interests that have the potential to influence the credit rating process. By obtaining this information from the NRSROs, the Commission will be able to retrospectively confirm or address issues regarding conflicts of interest. The Commission should also require NRSROs to retain any communications containing a request from an obligor, issuer, underwriter, or sponsor that the NRSRO assigns a specific analyst to a transaction in addition to the proposed requirement to retain complaints about analysts.

2. **Barring an NRSRO from issuing a rating on a security it helped to structure**

   This provision is important to investors, as it would bar underwriters from essentially paying for their own rating. This is the most fundamental source of conflict of interest within an NRSRO, as the firm will provide services to the underwriter which is intended to ultimately help raise the rating of their product. However, the line is unclear as to when these underwriters are paying for a recommendation and when they are paying for a higher rating. While this provision will not completely eliminate this conflict of interest, it will significantly help the issue that this brings up for NRSROs and underwriters.

   Alternatively, an option would be to require disclosure of the services and fees associated with the services provided by the NRSRO beyond the rating of the product. This option would allow NRSROs to continue to provide services and recommendations to underwriters; however investor knowledge of the transactions could potentially mitigate the inherent conflict of interest. In addition to disclosure of fees and services

associated with additional services, procedures must be set in place in order to best address any conflict of interest that might arise in such a situation. For example, policies should require fees and payments be handled by a separate department that is as far removed from the analysts' position as possible.

3. **Barring analysts, rating committee members and those involved with the establishment of methodologies used for determining ratings from participating in fee discussions**

   While most of the larger NRSROs already have in place a system for addressing the inherent conflict of interest in fee discussions for a rating action, it is important that a rule exist to maintain the distance between analysts and the departments handling fee negotiations. While this rule should be implemented without problems at the larger NRSROs, some of the smaller and younger firms may have a difficult time adjusting to this process and it may be necessary to allow these NRSROs to do a phased implementation of the separate departments or to allow a longer time frame for these companies to adhere to the policy in order to most effectively foster competition amongst the NRSROs.

Proposed Amendments to Instructions for form NRSRO

1. **Requiring NRSROs to publish default and transition statistics for each asset class over 1, 3, and 10 year periods.**

   This information is very important to document, especially as it relates to specific asset classes, in order for investors to be able to make accurate and informed decisions. This information will allow investors to determine how accurate NRSROs are in their ratings estimates and would also allow them to gain further information on risk behaviors of newer and unstudied asset classes. This information will be invaluable in the future, as the market continues to develop new and more complex structured finance products.

   A concern raised by this proposal, however, is similar to that of the above proposal, in that it requires that all NRSROs publish their own information on their firms' website. As discussed above, this could make the information difficult to access by investors. The process would be significantly improved if all information was stored on one website, maintained by the SEC.

Proposed New Rule 17g-7 – Differentiated Ratings or Special Report for Structured Products

1. **Requiring NRSROs to publish a report attached to a rating issued on a structured security that describes the rating methodologies used and how risk characteristics for structured finance products differ from other securities**

2. **Requiring NRSROs to use a different nomenclature for ratings issued on structured securities.**

   Colorado PERA strongly supports the SEC mandating guidance on structured finance products. By adding different nomenclature for ratings issued on structured securities investors are clearly made aware of the financial product in which they will be investing. However, it would be most helpful to also issue a report detailing the methodologies used and how risk characteristics for these products differ from other financial instruments. By fully informing investors on these issues, the SEC will be allowing investors to conduct their own research regarding the financial instruments they use and the risk associated with these investments. Because of the complex nature of structured finance products, it is of the utmost importance that investors be able to be fully aware of and educated on various financial instruments. We support the implementation of both the new nomenclature and a report regarding methodologies and risks for structured security products.

Thank you for the opportunity to provide these comments and for your efforts in developing the proposed rules.

Sincerely,

Gregory W. Smith
General Counsel