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September 5, 2008

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attn: Florence E. Harmon, Acting Secretary

Re: Release No. IC-28327; IA-2751; File No. S7-19-08
Release No. 33-8940; 34-58071; File No. S7-18-08
Release No. 34-58070; File No. S7-17-08

Dear Ms. Harmon:

We submit this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments on its proposals concerning references in its rules to ratings of nationally recognized statistical rating organizations ("NRSROs").[1] Most of the Commission's proposed rule and form changes (collectively, the "proposed rules") reflect the Commission's view, in light of the ongoing credit crisis, that while ratings assigned by NRSROs play an important role in the market, they are not the sole source of useful information concerning rated securities available to market participants, and should not be enshrined in Commission rules and forms in a way that could be viewed as implying they are. However, a few of the proposed rules cannot be reconciled with this premise. Some of the proposed rules would have the effect of making high-quality securities unavailable to retail investors for no demonstrable reason, and others would have the effect of making the benefits of short-form registration and shelf registration unavailable to high-quality issuers, also for no reason.

[1] SEC Release No. IC-28327; IA-2751; File No. S7-19-08 (the "1940 Act Release"), SEC Release No. 33-8940;34-58071; File No. S7-18-08 (the "1933 Act Release") and SEC Release No. 34-58070; File No. S7-19-08 (the "1934 Act Release" and together with the 1940 Act Release and the 1933 Act Release, the "Releases").

The Commission's proposed revisions to Rules 2a-7, 5b-3 and 10f-3 under the Investment Company Act, Rule 206(3)-3T under the Investment Advisers Act, and Rule 15c3-1 under the Securities Exchange Act all take the approach of replacing specific references to NRSRO ratings with standards that utilize more general criteria such as credit risk and liquidity. In the Releases, the Commission makes clear that in making the required determinations as to whether these general criteria are satisfied, the applicable market participants may continue to rely on NRSRO ratings if they choose. In framing the proposed rules in this way, the Commission acknowledges that NRSRO ratings provide valuable information about securities investments, but seeks to negate any implication that the Commission has determined that NRSRO ratings are the only valid source of such information, or are necessarily superior to other sources. This approach is consistent with the theme in the Commission's related proposed rules for nationally recognized statistical rating organizations.[2]

I. Investment Company Act Rule 3a-7, S-3 Eligibility for ABS Issuers, and Rule 415 Eligibility for MBS Issuers

In contrast to the approach the Commission has taken in modifying the references to NRSRO ratings in the rules cited above, the Commission's proposed revisions to Rule 3a-7 under the Investment Company Act prohibit the offering of such securities to retail investors entirely instead of permitting them to use the available information to make their own evaluation. Rule 3a-7 is the only Investment Company Act exemption that can be relied on by many types of asset-backed security ("ABS") and repackaging transactions, and was intended to permit the qualifying securities to be offered publicly in the same way that mortgage-backed and receivables-backed securities had previously been, thereby somewhat removing the disadvantage to which newer types of ABS were subject under Commission rules. If the Commission modifies Rule 3a-7 as proposed, there will be little advantage to offering those types of ABS on a registered basis because the pool of eligible investors will not increase, and we believe it is likely therefore that sponsors and underwriters of such transactions will once again turn to the Rule 144A market and avail themselves of the exemption from Investment Company Act registration provided by Section 3(c)(7). There will once again be an unjustified distinction between the way in which some mortgage-backed securities ("MBS") and receivables-backed ABS are distributed and the way in which other ABS are, to the disadvantage of investors and market innovation. We believe that for such securities NRSRO ratings do generally represent the best information available because it is the NRSROs that possess the means and motive to perform the complex analysis that such structured investments require. In the NRSRO Rules Release, the Commission has proposed a comprehensive set of measures to strengthen the transparency and competitiveness of such ratings, as has been suggested by a number of reports that have examined the role of ratings in the credit crisis. We believe that if some version of those measures is adopted by the Commission after comment, the more robust NRSRO ratings will be sufficient to ensure that enough information is available to retail investors to permit them to make informed decisions in an efficient market, especially concerning investment-grade instruments. We suggest that Rule 3a-7 be retained as it is.

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[2] SEC Release No. 34-57967; File No. S7-13-08 (the "NRSRO Rules Release").

The Commission has also proposed to modify the eligibility requirements for use of Form S-3 by ABS issuers, and the availability of Rule 415 to MBS issuers, to permit shelf registration of ABS and MBS only if the securities are sold and traded in $250,000 minimum denominations, and only if the initial sales are made exclusively to "qualified institutional buyers" as defined in Rule 144A. We do not believe it is practical for most ABS and MBS issues to be offered on a registered basis unless the issuer can use short-form registration and shelf registration procedures. Consequently, we believe the effect of this proposed modification would be to lead issuers to the private placement market.

II. S-3/F-3 Eligibility for Non-ABS Issuers

The Commission's proposed revisions to Forms S-3 and F-3 relating to primary issuances of non-convertible securities similarly are not supported by either the rationale behind the Commission's other proposed rules or the market events that prompted these proposals in the first place. Today, issuers that do not meet the minimum float requirements of Forms S-3 and F-3 may nonetheless use those short forms for primary offerings of nonconvertible securities if those securities are rated investment grade by at least one NRSRO. The Commission proposes instead to make those forms available to such issuers only if they have issued for cash more than $1 billion in registered non-convertible securities over the past three years. The Commission states that the $1 billion issuance criterion, which is derived from the "well-known seasoned issuer" criterion, is appropriate because it implies that the issuer has a wide following in the marketplace. As described above, one premise of the Commission's other concurrent rule proposals is that NRSRO ratings do provide valuable information to the market. While the fact that an issuer has publicly offered a large amount of debt securities in the past three years may be one reason to expect there will be significant information from analysts and others available in the market regarding that issuer, there is no reason to believe such information is any more reliable than the ratings of NRSROs, especially in the case of investment-grade issuers. If the Commission wishes in these forms to avoid giving undue weight to NRSRO ratings, it should permit issuers to avail themselves of S-3/F-3 registration for primary offerings of non-convertible securities if either those securities are rated investment grade or they meet the $1 billion WKSI standard.

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We thank the Commission for the opportunity to submit this comment letter. We would be happy to discuss with you any of the concerns described above or any other matters that would be helpful in adopting the final rules. Please do not hesitate to contact Leslie N. Silverman or Raymond B. Check (212-225-2000) if you would like to discuss these matters further.

Very truly yours,

CLEARY GOTTLIEB STEEN & HAMILTON LLP