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Secretary
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Subject: S7-13-08 – Proposed Rules for Nationally Recognised Statistical Rating Organisations

Dear Sir or Madam,

The International Banking Federation (IBFED) welcomes the opportunity to comment on the SEC's proposal to amend its regulation of nationally recognised statistical rating organisations ("NRSROs"). As a global body representing banks in the US, Europe, Japan, Australia and Canada, it is our primary concern that regulation of globally active institutions – as is the fact for at least the three largest NRSROs – be internationally aligned.

IBFED commented previously on IOSCO's proposals for amendments to its Code of Conduct Fundamentals for Credit Rating Agencies ('IOSCO Code'), and indeed supported most of these proposals which have now already been implemented (http://www.iosco.org/library/pubdocs/pdf/IOSCOPD271.pdf). We wish to welcome the fact that many of the SEC's proposals go in a similar direction, which we see as a helpful result of the internationally conducted discussions in several fora. At the same time, we note that there are however also a number of important divergences between the IOSCO Code and the SEC's proposals. We encourage the SEC and its international colleagues to continue the regulatory dialogue with a view to achieving the highest possible degree of regulatory consistency.

In parallel, we would welcome that the SEC's proposed rules yet be closer aligned with the principles agreed with international colleagues for the IOSCO Code. This is also against the backdrop that regulation is equally considered in other jurisdictions, with the potential result of a number of rulebooks with very similar objectives, but divergences in the details which would make compliance more onerous and costly without any added value in prudential terms.

Alignment with IOSCO Code of Conduct Fundamentals

For example, we would suggest that the SEC's proposal that rating agencies be prohibited from issuing a rating on a structured product unless information on the underlying assets is made publicly available, could be aligned with the principles in the IOSCO Code relating to avoidance of conflicts of interest and transparency. In particular, the IOSCO provision 2.8 c) of the revised Code provides that CRAs should encourage structured finance issuers and originators to publicly disclose all relevant information, and should disclose if the issuer is disclosing all relevant information about rated products, or if information remains non-public. Provision 3.5 a) of the IOSCO Code requests CRAs to provide investors in structured finance products with information about its loss and cash flow analysis, so that the investor can understand the basis for the rating. Adoption of these provisions will serve the purposes of improving the independence of the rating agencies as well as their transparency, without creating the difficult implementation issues implied by the SEC's proposal.

Otherwise, we would also be concerned about the general scope of the SEC's requirement that CRAS publicly disclose of all communications between issuers, sponsors and underwriters, which seems overly prescriptive in our view and risks to negatively impact on the quality and flow of information received between rating agencies and issuers, sponsors and underwriters. Moreover, the proposals could lead to important disparities in the regulatory requirements in different jurisdictions, given that they are much more prescriptive than the IOSCO Code.

Additionally, the SEC's proposal that a record showing all rating actions and the date of such actions from the initial credit rating to the current credit rating identified by the name of the rated security or obligor and, if applicable, the CUSIP or Central Index Key (CIK) number of the rated obligor must be made publicly available on the corporate website of the NRSRO in an XBRL Interactive Data File, could be aligned with the IOSCO Code paragraphs relating to transparency and timeliness of ratings disclosure. Notably, paragraph 3.3 of the IOSCO Code requires CRAs to indicate when ratings were last updated and what methodology was used for the rating; paragraph 3.4 requires CRAs to disclose ratings and ratings actions that are in whole or in part based on material non-public information; and paragraph 3.8 requires CRAs to publish historical default rates by rating category. These provisions are designed to increase transparency of ratings without undermining the business models of credit rating agencies or potentially interfering with third-party intellectual property rights.

Differences between the ratings of structured products and traditional debt

Regarding the use of different rating symbols for structured products, we have previously underlined the significance of background information given to investors, including general descriptions about the meanings and limitations of ratings. Although we recognise that structured products and traditional debt have different characteristics, the rating scales – which are an opinion as to the probability of default or expected loss – should be the same across the range of products.

We therefore believe that the SEC's proposal to require CRAs to issue a report on the differences between ratings of structured products and other securities when they rate a structured finance product, is preferable to the IOSCO Code in this instance. A narrative report of this sort would indeed be helpful to investors. As opposed to this, the alternatively required use of different symbols for structured finance products would not simply signal

different product characteristics to investors, but might also be interpreted to indicate a lower quality than traditional corporate bonds. Such a mistaken interpretation would hamper the recovery and the future development of the securitisation markets. In addition, we fear that the introduction of a new rating symbology would conflict with private investment mandates and guidelines.

Ban of 'recommendations'

The SEC's ban of any 'recommendations' by a credit rating agency to the obligor, issuer, underwriter, or sponsor of the security about matters related to the activities or structure of the obligor or issuer lacks in clarity in our view. Given the strictness of this requirement, it should be very clearly defined what would be considered to be a recommendation, and what would be considered mere information about the NRSRO's procedures and methodologies.

Scope of the SEC rules

We note furthermore that the SEC's proposed disclosure rules would not only apply to offerings registered in the US, but to all offers of securities, both registered and private, and including offerings outside the US that do not explicitly involve or target participants based in the US. We would be highly concerned about such an extraterritorial effect of the SEC regulations, and we believe that such an advance could work to disturb the fruitful relationships that the SEC has in recent years built with other national and international regulatory bodies.

Finally, as regards the Commission's monitoring of NRSRO's compliance with the applicable rules we would again ask for continued international cooperation. In principle, it would be most desirable that the IOSCO as an international body be involved in such a process. Going forward, we would request the international authorities to scrutinise where common monitoring action might complement the regulatory dialogue.

We look forward to the SEC's conclusions and are at your disposal for any questions you might have.

Yours sincerely,

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