Jill M. Peterson
Assistant Secretary
US Securities and Exchange Commission
100 F Street NE
Washington, DC

Comments on: Proposed Rules for Nationally Recognized Statistical Rating Organizations

[RELEASE NO. 34-57967; File No. S7-13-08]

Dear Ms. Peterson:

We welcome the opportunity to comment on the Proposed Rules for Nationally Recognized Statistical Rating Organizations (NRSROs).

The work of our firm is the development of tools and systems for the visualization of credit risk and return for retail investors, registered representatives and financial advisors. These tools and systems transform the complex and varied data of the fixed income markets into simple charts and graphs.

We commend the Commission for their work on the issue of enhancing competition and transparency for NRSROs. Investors will participate in transparent and open markets. The results of this round of rulemaking will add significantly to market confidence in the accuracy and integrity of credit ratings.

The goal of further enhancing the utility of NRSRO disclosure to investors, strengthening the integrity of the ratings process, and more effectively addressing the potential for conflicts of interest inherent in the ratings process for structured finance products is worthy.

Because our work is centered on retail investors we have no comments on issues related to the issuance of credit ratings for structured finance or ABS products.

# # #

- - - - Amend Rule 17g-5(c) to add a new paragraph (5) that would prohibit an NRSRO from issuing a credit rating with respect to an obligor or security where the NRSRO or a person associated with the NRSRO, as defined in Section 3(a)(63) of the Exchange Act, made recommendations to the obligor or the issuer, underwriter, or sponsor of the security (that is, the parties responsible for structuring the security) about the corporate or legal structure, assets, liabilities, or activities of the obligor or issuer of the security. - - - -

Underwriters and arrangers have exerted disproportionate influence on the selection of NRSROs in the securities issuance process.

Previously, the opportunity for significant influence on the credit rating analyst by the underwriters or arrangers agent was not balanced by other safeguards.

The Commission has reported in its recent examination of the current dominant NRSROs evidence of the need for this conflict to be mediated.

The following from page 32 of The Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies:

~~~~ "… Second, there is a high concentration in the firms conducting the underwriting function. Based on data provided by the three rating agencies examined, the Staff reviewed a sample of 642 deals. While 22 different arrangers underwrote subprime RMBS deals, 12 arrangers accounted for 80% of the deals, in both number and dollar volume.

Similarly, for 368 CDOs of RMBS deals, although 26 different arrangers underwrote the CDOs, 11 arrangers accounted for 92% of the deals and 80% of the dollar volume.

In addition, 12 of the largest 13 RMBS underwriters were also the 12 largest CDO underwriters, further concentrating the underwriting function, as well as the sources of the rating agencies' revenue stream.

Achieving accuracy in ratings in a fast-changing market for a relatively new security may require frequent updating of the models used to produce the ratings, leading to quickly-changing ratings processes. The combination of the arrangers' influence in determining the choice of rating agencies and the high concentration of arrangers with this influence appear to have heightened the inherent conflicts of interest that exist in the "issuer pays" compensation model.

One area where arrangers could have benefited in this context is in the ratings process itself. In discussions with OEA Staff, the ratings agencies indicated that arrangers preferred that the ratings process be fast and predictable. For instance, arrangers and their employees are generally compensated, at least in part, by the volume of deals completed and the total dollar volume of those deals. The Staff understands that at least one rating agency allowed deals that were already in the ratings process to continue to use older criteria, even when new criteria had been introduced.

Pressure from arrangers could also come in the form of requiring more favorable ratings or reduced credit enhancement levels. Such outcomes would reduce the cost of the debt for a given level of cash inflows from the asset pool. This benefit is particularly valuable to an arranger when it also serves as the sponsor of the RMBS or CDO trust. Such pressure could influence the rating agencies' decisions on whether to update a model when such an update would lead to a less favorable outcome.
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High profit margins from rating RMBS and CDOs may have provided an incentive for a rating agency to encourage the arrangers to route future business its way. Unsolicited ratings were not available to provide an independent check on the rating agencies' ratings, and the structures of these securities were complex, and information regarding the composition of the portfolio of assets, especially prior to issuance, was difficult to obtain for parties unrelated to the transaction…." ~~~~

We fully endorse the adoption of this amendment which bars a credit analyst from making recommendations about the corporate or legal structure, assets, liabilities or activities of the obligor or issuer of the security.

In sum it bars the "*transition from an objective credit analyst to subjective consultant.*"

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- - - - Amend Rule 17g-5 by adding a new paragraph (c)(6) of Rule 17g-5 to address the conflict of interest that arises when a fee paid for a rating is discussed or arranged by a person within the NRSRO who has responsibility for participating in determining credit ratings (including analysts and rating committee members) or for developing or approving procedures or methodologies used for determining credit ratings, including qualitative and quantitative models. - - - -

We support, to the extent practicable, the severing of analytical and commercial responsibilities in NRSROs.

Free functioning markets rely on unconflicted credit analysis.

Large credit rating firms have the resources to separate these responsibilities and should do so.

For small NRSROs, (less than 20 associated persons) who are compensated by issuers or arrangers, a prudent course would be for the rater to establish a price list for their services and expose that to those seeking their services.

For any fee arrangement that deviated substantively from the pre-established price list enhanced documentation standards for the fee determination process should be imposed. The managing director or other upper management should attest to the proper management of conflicts attendant in the deviation from established pricing.

# # #

- - - - Amend Rule 17g-5 by adding a new paragraph (c)(7) that would prohibit an NRSRO from having a conflict of interest relating to the issuance or maintenance of a credit rating where a credit analyst who participated in determining or monitoring the credit rating, or a person responsible for approving the credit rating, received gifts, including entertainment, from the obligor being rated, or from the issuer, underwriter, or sponsor of the securities being rated, other than items provided in the context of normal business activities such as meetings that have an aggregate value of no more than $25. - - - -

This prohibition is appropriate in the context of the credit analysis process given that often subjective factors are taken into account within certain rating methodologies and processes.

Further, if credit analysts regularly received gifts from those whose securities they review, they might be inclined to skew a methodology to favor the arranger or underwriter.

The adoption of this rule banning gifts with a value greater than $25 would relieve analysts, issuers and their representatives from the need to monitor this conflict and allow them to focus on more substantive matters within the credit ratings process.

# # #

- - - Amend Exchange Act Rule 17g-2 to add a new paragraph (8) to Rule 17g-2 that would require a registered NRSRO to make and retain a record showing all rating actions (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.

Furthermore, the Commission is proposing to amend Rule 17g-2(d) to require that this record be made publicly available on the NRSRO's corporate Internet Web site in an interactive data file that uses a machine-readable computer code that presents information in eXtensible Business Reporting Language ("XBRL") in electronic format ("XBRL Interactive Data File").

The purpose of this disclosure is to provide users of credit ratings, investors, and other market participants and observers the raw data with which to compare how the NRSROs initially rated an obligor or security and, subsequently, adjusted those ratings, including the timing of the adjustments. In order to expedite the establishment of a pool of data sufficient to provide a useful basis of comparison, this requirement would apply to all currently rated securities or obligors as well as to all future credit ratings.

The goal of this proposal is to foster greater accountability of the NRSROs with respect to their credit ratings as well as competition among the NRSROs by making it easier for persons to analyze the actual performance of the credit ratings the NRSROs issue in terms of accuracy in assessing creditworthiness. The disclosure of this information on the history of each credit rating would create the opportunity for the marketplace to use the information to develop performance measurement statistics that would supplement those required to be published by the NRSROs themselves in Exhibit 1 to Form NRSRO. - - - (page 36228)

There is general agreement in the financial markets that the widespread misrating of structured finance products was one of the central causes of the Credit Crisis of '07-08. The misrating of these products was not the only cause of the crisis but it clearly obscured the risk embedded in an entire class of securities. This led to the significant mispricing of these assets.

Significant concentrations of credit and liquidity risk were created by the assignment of ratings from a small number of NRSROs who appear to have had conflicts of interests in the ratings process.

A lack of transparency in the public reporting of off-balance sheet obligations (ABCP conduits, SIVs, etc) of financial entities, in addition to the misrating and mispricing of securities, imperiled the stability of the global financial system.

Given the enormous market value of the global pool of fixed income securities we surely will look back and wonder why so little information on these assets was available. We wonder if market concentration and opacity exists in other financial markets now to the extent documented in the structured finance area.

It is understandable why the SEC and other global regulators are seeking exceptional new levels of transparency for the credit markets.

Global market stability requires new approaches to information disclosure and analysis.

Within this context we commend the Commission for the proposed measures to expose the credit rating actions of the NRSROs to public scrutiny in a readily accessible form (XBRL).

Public confidence in our financial institutions and markets demands this level of transparency.

When the Financial Times questioned the application of ratings methodologies to constant proportion debt obligations (CPDO) on May 20th, 2008 the media, academia, international regulators, oversight boards and market participants were generally not able to assess the validity of the Financial Times claims.

This proposal, for NRSROs to expose their rating actions, will create a method for all these parties to have easy access to the credit ratings of NRSROs, gather this data and perform various types of analysis.

This increased disclosure and transparency will create confidence in the credit ratings process and more generally enhance the stability of the financial system.

- Is the six-month delay before publicly disclosing a rating action sufficiently long to address the business concerns of the subscriber-based NRSROs and the issuer-paid NRSROs? Should the delay be for a longer period such as one or two years or even longer? Alternatively, is six months too long and should it be a shorter period of time such as three months or even shorter?

We recommend the Commission consider the application of this rule in a manner that varies according to the business model of the NRSRO.

If the NRSRO utilizes a “subscriber pay” model we recommend that the placement of rating actions on the NRSRO’s website include a 12 month delay. This will serve to protect the intellectual property and labor embodied in the creation of the analysis.

If the NRSRO utilizes an “issuer pay” model we recommend that the placement of rating actions on the NRSRO’s website occur with no delay or alternatively a very short (less than one week) delay.

We make these recommendations bearing in mind the substantial conflicts that are embedded in the “issuer pay” models.

Because the Commission choose not to require issuer “equivalent disclosure” for all classes of ratings (amendment of Rule 17g-5 new (a)(3) for structured finance products) the likelihood is high that “ratings shopping” will persist for “issuer pay” credit ratings of the other four classes of NRSRO ratings.

It does not appear that any of the proposed new rules will directly restrict the other classes of issuers from “ratings shopping.” Or mandate broad disclosure of the material non-public information of the issuer to all NRSROs.

We assume this decision is premised on the Commission’s belief that enhanced disclosure of rating actions and performance measurements will leverage market transparency forces to cure information asymmetry.

The proposed approach to rating action disclosure will increase market participants and academics ability to assess the accuracy of an NRSRO using comparative and historical analysis.

It is not clear that these forces will be sufficient to address base level asymmetries between compensated and non-compensated NRSROs and issuers.

It will be a relatively simple matter for these issuers to continue to rate shop even with the enhanced disclosure of rating actions.

The issuer need only pre-query the various NRSROs about the credit rating they would assign a security. The issuer would then choose to compensate the NRSROs with the highest ratings.

Although corporate securities, as a class, currently appear to have minimal conflicts embedded in the ratings process it is really not so long ago that significant issues arose when a dominant underwriter, Drexel Burnham Lambert, controlled the high yield market.

One need only look back to the 70’s and 80’s to see highly concentrated activity in that market. We are aware of no regulatory restraints that would limit the emergence of another underwriting entity with such dominance.

We recommend the immediate publication of “issuer pay” ratings on an NRSRO’s website due to the following:

a) The assurance of global financial stability when issues arise related to the rating of entire classes of securities or an exceptionally large issuer
b) The potential for increased concentration of underwriting
c) The need to counterbalance “rating shopping” in the other four classes of securities

- Should the rule require that a notice be published along with the XBRL Interactive Data File warning that because of the permitted delay in updating the record some of the credit ratings in the record may no longer reflect the NRSRO's current assessment of the creditworthiness of the obligor or debt security?

We believe that a general disclaimer, prominently displayed on the NRSROs website, would serve as appropriate notice concerning whether the credit ratings made available in XBRL were "current assessments" or their publication was delayed for a specific period of time.

- Are there ways in which the NRSROs should be required to sort the credit ratings contained on the record such as by asset class or type of ratings?

It would be useful for the purposes of analysis by market participants and academics if the class of rating was identified in the published XBRL record of a rating. This would allow users to sort the data in any manner that was useful for their analysis.

- What mechanisms are appropriate for identifying rated securities? Are there other identifiers in addition, or as an alternative, to CUSIP or CIK number that could be used in the rule?

Generally the use of the CIK and CUSIP are excellent. We encourage the Commission to consider the use of TRACE symbols for corporate securities which are reported to FINRA's TRACE system.

- Should the Commission allow the ratings action data to be provided in a format other than XBRL, such as pipe delimited text data ("PDTD") or eXtensible Markup Language ("XML")? Is there another format that is more widely used or would be more appropriate than XBRL for NRSRO data? What are the advantages/disadvantages of requiring the XBRL format?

No, NRSRO should be required to provide ratings action data in XBRL.

Because the Commission is in the process of mandating the use of XBRL for public reporting company financials and mutual fund summaries the use of XBRL for NRSRO performance statistics will be particularly useful.

Further we anticipate that European securities regulators will embrace a similar framework for the oversight of credit rating agencies.

XBRL has been enjoying global adoption. We encourage the Commission to envision a future with vast quantities of readily parsable data available to market participants and regulators in XBRL. The addition of NRSRO performance data available in an XBRL format will greatly enrich the global dataset.

- Should the Commission take the lead in creating the new tags that are needed for the XBRL format or should it allow the tags to be created by another group and then review the tags? How long would it take to create new tags?

Yes. The Commission should determine a minimum set of tags and mandate the use of those tags by the NRSROs. This should be done within 30 days.

Concurrently, the Commission should engage XBRL US to create a comment process and craft an additional body of tags for voluntary use by NRSROs and market participants for NRSRO data.

This voluntary set of tags would build on the basic set of tags and allow the extension and customization of the reporting of performance statistics. The development and ongoing maintenance of this voluntary set of tags should be done by XBRL US in coordination with their international counterparts.

- The Commission anticipates that the data provided by NRSROs would be simple and repetitive (i.e., the data would be name, CUSIP, date, rating, date, rating, etc.). Is there a need for more detailed categories of data?

It would be useful if the minimum tag set listed above included a tag for the "class" of rating. This would allow users to parse out data for different classes of securities and provide more detailed performance statistics.

Additional tags should be voluntary.

- What would be the costs to an NRSRO to provide data in the XBRL format? Would there be a cost burden on smaller NRSROs? Is there another format that would cost less but still allow investors and analysts to easily download and analyze the data?

Smaller NRSROs would likely provide the minimum set of tags for the universe of ratings which they produce. It should not be prohibitive for smaller firms to either develop or contract the development of a lightweight database and file serving system to meet this Commission requirement. Additionally significant development resources are available via XBRL.us and various XBRL vendors.

In the extreme, the Commission could allow a small NRSRO to petition for exemption from this requirement. This would not likely happen though as the market will come to expect a higher level of transparency related to performance statistics reporting.

- Should the Commission institute a test phase for providing this information in an XBRL format (such as a voluntary pilot program, similar to what it is currently doing for EDGAR filings)? How long should this test phase last?

We believe that a test phase should be relatively short in keeping with the simplicity of the requirements of this mandate. We suggest 90 days for a test pilot and an additional 45 days for users to provide comments to the Commission.

- Where is the best place to store the data provided by NRSROs? Currently, information that needs to be made publicly available is stored on each NRSRO's website. Should the Commission create a central database to store

the information? If so, should it use the EDGAR database or should it create a new database?

We have commented previously that we believe a central repository for performance statistics (NRSRO Exhibit 1) utilizing the Edgar system would be useful to investors. This would be in addition to the placement of Exhibit 1 on a NRSRO's site.

For the dissemination of individual rating actions we believe that the NRSRO's own site is a more effective location (in XBRL format). We believe that it is not necessary and would be challenging administratively to require the timely aggregation of this data within Edgar.

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- - - Amend *paragraph (a)(2) of Rule 17g-2 to add an additional record that would be required to be made for each current credit rating, namely, if a quantitative model is a substantial component in the process of determining the credit rating, a record of the rationale for any material difference between the credit rating implied by the model and the final credit rating issued.*

- Would this proposal have the impermissible effect of regulating the substance of credit ratings in any way?

No. We do not believe that this requirement for a disclaimer record would constitute regulating the substance of ratings. This requirement would support enhanced transparency for the ratings process and investor protection.

- Should the Commission define in the rule when the use of a model would be a "substantial component" in the process of determining a credit rating? Commenters endorsing the adoption of such a definition should provide specific proposals.

No.

- Are there certain types of rated products (e.g., corporate debt, municipal bonds) which generally employ a quantitative model as a substantial component of the ratings process? Commenters should identify the types of bonds and a general description of the models used to rate them.

The Credit Rating Agency Reform Act allows qualitative and quantitative methodologies for the analysis of rated debt. The current NRSROs have stated that they generally use a combination of quantitative and qualitative methodologies. It is very difficult to predict what new methodologies and systems will evolve.

- Should the Commission define in the rule when the divergence from a model would be "material"? Commenters endorsing the adoption of such a definition should provide specific proposals.

Defining materiality in this context would be difficult given the large number of data sources, models and rated products. We recommend allowing the NRSROs to determine "material." It would be useful for the NRSROs to disclose their guidelines for this determination.

- Should the Commission require that the information about material deviations from the rating implied by the model be publicly disclosed by the NRSRO in the presale report or when the rating is issued?

Yes. The information would be useful for the protection of investors.

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- - - Amendment would add a new paragraph (b)(8) to Rule 17g-2 to require an NRSRO to retain any communications that contain complaints about the performance of a credit analyst in initiating, determining, maintaining, monitoring, changing, or withdrawing a credit rating.

- In addition to the proposed recordkeeping requirement, should the Commission require the NRSROs to publicly disclose when an analyst has been re-assigned from the responsibility to rate an obligor or the securities of an issuer, underwriter, or sponsor?

It would be useful for the NRSRO to disclose, in aggregate at year's end, any reassignments of analysts. This would provide a generalized view to market participants of any challenges posed to the NRSRO by conflicts of interest.

- Should the Commission require NRSROs to retain any communications containing a request from an obligor, issuer, underwriter, or sponsor that the NRSRO assign a specific analyst to a transaction in addition to the proposed requirement to retain complaints about analysts?

Absolutely.

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- - - Paragraph (b)(7) of Rule 17g-2 currently requires an NRSRO to retain all internal and external communications that relate to "initiating, determining, maintaining, changing, or withdrawing a credit rating." The Commission is proposing to add the word "monitoring" to this list.

- Should the Commission delete the term "maintaining" from paragraph (b)(7) and proposed new paragraph (b)(8) of Rule 17g-2 as it has the same meaning as "monitoring?"

Very good addition to the rule language.

# # #

<u>Enhanced Ratings Performance Measurement Statistics on Form NRSRO</u>

- - - Proposed amendment would augment the instructions to Exhibit 1 by requiring the disclosure of separate sets of default and transition statistics for each asset class of credit rating for which an applicant is seeking registration as an NRSRO or an NRSRO is registered and any other broad class of credit ratings issued by the NRSRO.

- - - Proposed amendment would require that these class-by-class disclosures be broken out over 1, 3 and 10-year periods. Section 15E(a)(1)(B)(i) of the Exchange Act requires that the performance statistics be over short, mid, and long-term periods.

- - - Proposed amendment would modify what ratings actions are required to be included in these performance measurement statistics by replacing the term "down-grade and default rates" with "ratings transition and default rates." The proposed switch to "ratings transition" rates from "downgrade" rates is designed to clarify that upgrades (as well as downgrades) should be included in the statistics.

- - - Proposed amendment would specify that the default statistics required under the exhibit must show defaults relative to the initial rating and incorporate defaults that occur after a credit rating is withdrawn. This amendment is designed to prevent an NRSRO from manipulating the performance statistics by not including defaults when generating statistics for a category of credit ratings (e.g., AA) because the defaults occur after the rating is downgraded to a lower category (e.g., CC) or withdrawn.

- Should the Commission prescribe specific standards for the performance statistics, such as requiring an NRSRO to disclose how its credit ratings performed relative to metrics such as credit spreads? Commenters endorsing such an approach should provide specific details as to how it could be implemented; taking into consideration factors such as the issues related to the difficulty of obtaining timely and consistent pricing information for many debt instruments and the volatility of credit spreads.

No. The Commission should not require the measurement of a NRSRO's ratings relative to credit spreads. While this may be a useful metric for certain market participants such as institutional investors this requirement could serve as a barrier to entrance for rating firms hoping to serve other sectors of the investing community such as retail investors. NRSROs may choose to do analysis of this type for competitive advantage.

We do hope that credit rating firms utilizing credit default swaps mapped to credit rating symbology will develop and apply for NRSRO designation. We believe that provision of this type of credit rating analysis could be very powerful for credit markets for numerous reasons.

- Should the Commission require performance statistics in a more granular form than by class of credit ratings? For example, should the Commission require for structured finance products statistics by more narrowly defined

asset classes such as CDOs and RMBS or types of asset-backed securities such as those backed by home loans, credit cards, or commercial real estate? Commenters endorsing greater granularity should provide specific details, including definitions of the credit rating classes.

No. We believe that the Commission should establish a minimum framework for reporting ratings by class and allow NRSROs to voluntarily provide more granular performance statistics. We believe that some NRSROs may provide more granular reporting for a competitive advantage.

- Should the Commission prescribe different time periods for the short, medium, and long term statistics than 1, 3, and 10 years, respectively. For example, should the periods be 6 months, 2 years and 7 years or 2, 5, and 15 years or some other set of time periods?

We believe that the proposed time periods of 1, 3 and 10 years are appropriate for retail investors. Generally the "aging" of credit risk for bonds is appropriately captured at those intervals.

# # #

Enhanced Disclosure of Ratings Methodologies

- - - Amend the instructions for Exhibit 2 to Form NRSRO to require enhanced disclosures about the procedures and methodologies an NRSRO uses to determine credit ratings.

- How frequently credit ratings are reviewed, whether different models or criteria are used for ratings surveillance than for determining initial ratings, whether changes made to models and criteria for determining initial ratings are applied retroactively to existing ratings, and whether changes made to models and criteria for performing ratings surveillance are incorporated into the models and criteria for determining initial ratings**.**

Yes, this additional level of reporting on Exhibit 2 concerning ratings methodologies, surveillance, model changes and the retroactive application of updated methodologies would be useful for retail investors to assess the resources that NRSROs are contributing to the ratings process.

# # #

Amendment to Rule 17g-3 (Report of Credit Rating Actions)

- - - Amend Rule 17g-3 to require an NRSRO to furnish the Commission with an additional annual report of the number of credit rating actions during the fiscal year in each class of security for which the NRSRO is registered. Specifically, the amendment would add a new paragraph (a)(6) to Rule 17g-3, which would require an NRSRO to provide the Commission with a report of the number of credit rating actions (upgrades, downgrades, and placements on watch for an upgrade or downgrade) during the fiscal year in each class of credit ratings for which the NRSRO is registered with the Commission.

- Could the performance statistics currently required in Exhibit 1 to Form NRSRO, as well as the proposed enhancements to those statistics, be used to target potential problem areas in an NRSRO's credit rating processes in the same manner as this proposed report thereby making the report redundant?

This additional data will be useful to the Commission in their oversight responsibilities.

- Should the Commission also require NRSROs to furnish an "early warning" report to the Commission when the number of downgrades in a class of credit ratings passes a certain percentage threshold (e.g., 5%, 10%, 15%, or 20%) within a number of calendar or business days (e.g., 2, 5, 10, or 15 days) after the threshold is passed, similar to the broker-dealer notification rule (See 17 CFR 240.17a-11)?

We encourage the Commission to develop a process to solicit and receive ratings analysis developed by other regulatory bodies, academics and market participants. This could be useful to the Examination staff in their work. It is possible that these other entities might uncover "early warning" of deviations from past performance of an NRSRO. By providing an open channel for analysis developed by other parties the Commission might leverage outside resources for oversight.

# # #

Special Reporting or Use of Symbols to Differentiate Credit Ratings for Structured Finance Products

- - - Under proposed Rule 17g-7, each time an NRSRO published a credit rating for a structured finance product it also would be required to publish a report describing how the credit ratings procedures and methodologies and credit risk characteristics for structured finance products differ from those of other types of rated instruments such as corporate and municipal debt securities. The objective of this proposal is to alert investors that there are different rating methodologies and risk characteristics associated with structured finance products. As an alternative to publishing the report, an NRSRO would be allowed to use ratings symbols for structured finance products that differentiated them from the credit ratings for other types of debt securities.

The Commission is not proposing to require that specific rating symbols be used to distinguish credit ratings for structured finance products. An NRSRO would be permitted to choose the appropriate symbol. The Commission preliminarily believes that methods for identifying credit ratings for structured finance products could

include using a different rating symbol altogether, such as a numerical symbol, or appending identifying characters to existing ratings scales, e.g., "AAA.sf" or "AAASF."

In this matter we wanted to bring to the attention of the Commission our US patent application # 10/303,102 which covers a series of methods for the conversion and visualization of credit ratings from NRSROs for use by retail investors and registered representatives. This application was filed in November, 2002.

We received notice of a Final Rejection for this application on July 24, 2008. We have not reviewed this correspondence from the USPTO with patent counsel.

We are not certain if this disclosure is of direct relevance to the rulemaking for NRSROs but believe it would be useful to share the information in this context.

Application Number:	10/303,102	Customer Number:	-
Filing or 371 (c) Date:	11-25-2002	Status:	Final Rejection Mailed
Application Type:	Utility	Status Date:	07-24-2008
Examiner Name:	ONYEZIA, CHUKS N	Location:	ELECTRONIC
Group Art Unit:	3691	Location Date:	-
Confirmation Number:	2054	Earliest Publication No:	US 2004-0103050 A1
Attorney Docket Number:	P 0300448	Earliest Publication Date:	05-27-2004
Class / Subclass:	705/035	Patent Number:	-
First Named Inventor:	Catherine Long , Rhinebeck, NY (US)	Issue Date of Patent:	-

Title of Invention: **Fixed income securities ratings visualization**

- Would the reports or differentiated symbols achieve the Commission's stated goal of encouraging investors to perform more internal risk assessments of structured finance products? Could the reports cause investors to ignore other relevant disclosures or lead to confusion?

Yes. The requirement that rating symbology incorporate additional levels of information, such as using suffixes, would act as a signal to investors, fiduciaries, auditing and supervisory entities of the unique characteristics of the underlying securities. We support this measure because market participants have suffered significant harm from the misrating of structured finance products in the recent past. As an example we point to the significant potential losses of the Florida Retirement System related to structured finance products in 2007.

- Should the rule be expanded to require reports or different ratings symbols for each class of credit ratings identified in Section 3(a)(62)(B) of the Exchange Act (15 U.S.C. 78c(a)(62)(B)); namely: (1) financial institutions, brokers, or dealers; (2) insurance companies; (3) corporate issuers; (4) issuers of asset-backed securities; and (5) issuers of government securities, municipal securities or securities issued by a foreign government? Alternatively, should the rule be expanded to require reports or different ratings symbols for only certain of these classes or subclasses such as for municipal securities?

We note the proposed House legislation, the Municipal Fairness Act (HR 6308), which contains provisions to amend the Exchange Act to require that NRSROs:

- Codify that the purpose of credit ratings issued by NRSROs are to provide signals to market participants and regulators of the "risk of default" of a security or obligor.
- Clearly define symbols
- **Consistently apply symbols to all classes of securities**

The question posed by the Commission here "*Should the rule be expanded to require reports or different ratings symbols for each class of credit ratings…*?" appears to be moving in the opposite direction from the intent of the proposed legislation.

We generally favor allowing the NRSROs to determine their own symbol sets and gradations of risk probability. We do believe that the requirement for supplemental symbology such as a suffix for structured products is useful for market integrity.

Although a market based framework exists for the conversion of various NRSRO symbol sets it is possible that new NRSROs may have different approaches to defining various levels of default risk embodied in a class of securities.

For instance an NRSRO might adopt the "bucket structure" of Basel II to rate securities. Since capital weightings for Basel are reliant on a compressed rating scale an NRSRO may choose to rate obligors or securities using that framework.

- Should the rule prohibit an NRSRO from using a common set of symbols (e.g., AAA, AA, A, BBB, BB, B, CCC, CC, C) to rate different types of obligors and debt securities (e.g., corporate debt and municipal debt) where the NRSRO uses different methodologies for determining such ratings? Would such a proposal raise any questions relating to the scope of the Commission's legal authority in this area?

No. The Commission should anticipate that NRSROs methodologies will evolve over time. If we extend that observation would that require that an NRSRO also potentially evolve their ratings symbology over time?

We understand the desire of the Commission to help investors distinguish various classes of securities. Regulating the evolution of these symbol sets for a broad range of methodologies might impose particularly complex regulatory responsibilities on the Commission.

We believe that it is more useful to allow NRSROs the flexibility to define the framework or symbol set for the levels of risk embodied in various classes of securities. This is more useful than mandating either the current market based framework for ratings or prohibiting common symbol sets.

The important issue, in the comparison of ratings between securities and NRSROs, is the quantitative matter of probability of default or loss given default. Symbol sets are only place markers that point to specific probability of default.

- Should the rule allow the use of a common set of symbols only if the NRSRO determines additional types of ratings to distinguish the different risk characteristics of the different types of obligors and debt securities? For example, the rule could require the determination of ratings to distinguish the potential volatility of the credit ratings of different classes of obligors and debt securities or the differing levels of market and liquidity risk associated with different classes of debt securities. Would such disclosures raise any concerns regarding liability if they were found to be deficient?

We believe that the Commission might want to embody in this rulemaking process the primary objective of NRSRO generated credit ratings is to opine on the risk of default for an obligor or security.

The elevation of the importance of performance statistics suggests that this is a central fact. But it might serve market participants well to state this explicitly.

Generally we believe that NRSROs are not the appropriate parties to assess volatility, liquidity, the accuracy of pricing or other dimensions of securities.

Although some of the current dominant NRSROs have established volatility benchmarking it is unclear how one would assess the same determinations from smaller, less seasoned NRSROs.

We encourage the Commission to review these matters more closely before codifying additional responsibilities for NRSROs in this regard.

# # #

We thank the Commission for an opportunity to share these comments. It is very gratifying to think back to when our participation in this process began in 2003.

The Commission and other global regulators, Congress, academics and market participants have all contributed to a new framework for the oversight of credit rating agencies.

Transparency and competition are woven through this new framework. These forces, tied with appropriate regulation, will renew the practice of accurate and credible ratings.

The result of this effort should be an important new framework for a central part of our global financial markets.

We appreciate being part of this work.

Very kind regards,

Cate Long

Rhinebeck, New York

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