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By Electronic Mail

Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549

Re: File Number S7-13-08
Proposed Rules for Nationally Recognized Statistical Rating Organizations (Proposing Release)

Dear Ms. Harmon:

A.M. Best Company (A.M. Best) appreciates the opportunity to comment on the Securities and Exchange Commission's (the Commission) proposed rule amendments. A.M. Best is a nationally recognized statistical rating organization (NRSRO) registered under section 15E of the Securities and Exchange Act of 1934. Founded in 1899, A.M. Best has reported on the financial heath of insurers and the insurance industry for more than a century.

In response to recent turmoil in the credit markets, the Commission is proposing a series of amendments designed to improve the quality of ratings in general, and in particular, for structured finance products. We recognize the Commission's efforts to enhance confidence in the markets through the issuance of amended rules and support the Commission's proposals that would further foster accountability, transparency, and competition in the credit rating industry. We note that the genesis of the Commission's proposed rule changes is a reaction to market turmoil involving subprime residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs) linked to such subprime loans (Proposing Release pages 4-27), an area in which A.M. Best does not offer credit rating services. While the majority of the proposed amendments are generally designed to address issues specifically related to these products, many of the proposed amendments spill over into the overall operations of credit rating agencies. We have generally limited our responses to those aspects of the proposed rules that may

affect our ability to continue to provide credit rating opinions on certain types of transactions, if final rules are adopted as proposed, and other areas where we have questions or concerns about the amendments as proposed. Set forth below are our comments on the proposed amendments.

1. *Definition of "security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction" in proposed rule 17g-5(b)(9) is overly broad.*

We believe the term "security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction" as proposed in 17g-5(b)(9) is overly broad and may inadvertently sweep up within this general definition types of "structured securities transactions" that the Commission may not have intended the definition to cover. The Commission notes in its introduction to the Proposing Release that market turmoil caused by asset-backed securities transactions involving loans, more specifically, the adverse effect of delinquencies/defaults on mortgage loans made to subprime borrowers, is the principle reason for the Commission's proposed rule amendments and new rule.

Among the primary risks of the structured securities transactions identified by the Commission in the Proposing Release is the reliance of those types of structures on ongoing periodic payments being paid to it by external sources to meet the terms of its obligations, for example, a homeowner's ability to continue making timely mortgage payments. These types of asset-backed structures are also exposed to, among other risks, dynamic macroeconomic conditions, such as a general decline in the value of housing, which can negatively affect a borrower's ability and willingness to continue to make payments, and may ultimately result in severely depreciated asset values of the underlying collateral.

Other types of asset-backed securities transactions can be structurally designed to be self-liquidating and are not exposed to reliance on external periodic payments being made to the structure by individual retail consumers to meet the terms of its ongoing obligations. In addition, the underlying asset values in such transactions generally are uncorrelated with macroeconomic conditions. For example, in a typical life insurance securitization, the structure is designed to internally fund, at inception, the expected future premium flows required to maintain the asset values of the pool until liquidation of the pool assets. Final cash payments required to liquidate the pool assets are the death benefit payments made by an insurer, which typically expose the structure to mortality risk and very modest credit risk when compared to typical forms of loan-based asset-backed securities. From the outset, such structures are designed to reduce uncertainty and insulate the structure from external forces through self-funding mechanisms while also maintaining minimal exposure to credit risk.

Because certain types of asset-backed transactions, such as the above noted insurance-linked asset-baked structured transaction, differ fundamentally from the loan-based

structured transactions that the Commission identifies are the subject of the proposed rule amendments, we respectfully request that the Commission tailor proposed rule 17g-5(b)(9) to specifically exclude asset-backed transactions that are designed to internally fund and maintain the value of each pool asset prior to the liquidation of each pool asset, and where the pool assets are obligations of a corporate issuer, such as a death benefit payment made by an insurer.

Should the Commission's final rules not specifically, or alternatively, otherwise refine this overly-broad definition, to exclude these types of transactions, and further conclude that NRSROs are in any way responsible for dissemination of proposed rule 17g5(a)(3) information, we would be forced to assess the feasibility of A.M. Best Company continuing to provide credit rating services for these types of transactions, particularly if no safe harbor provision is included in the final rules. In addition to the numerous arguments as to why NRSROs should not be responsible for disclosure of paragraph (a)(3) information cited by other larger NRSROs commenting on the proposed rule, which we agree with, as a smaller NRSRO that specializes in a single industry, the infrastructure required to be built and maintained by the company to support and monitor initial and ongoing information dissemination obligations under the proposed rule may not be economically viable, given the small size of this market compared to the market for the types of structured transactions specifically identified by the Commission in the Proposing Release.

2. *Prohibition on Conflict of Interest Related to the Participation of Certain Personnel in Fee Discussions*

The Commission proposes to amend Rule 17g-5 (new paragraph (c)(6)) to prohibit 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 agree with the Commission's premise that an individual that is directly involved in the rating process of any particular entity should not be involved in fee negotiations with the issuer as such individuals might not be impartial when it comes to rating the issuer's securities, or the obligor as an entity. A.M. Best acknowledges this potential conflict in its Code of Conduct and prohibits company employees that are directly involved in the rating process from initiating, or participating in, discussions regarding fees or payments with any entity they rate. We note that because the company focuses its rating services on one asset class, the insurance industry, this prohibits all analysts and their supervisors from such discussions with any rated entity since any such personnel, at any given time, could be involved in the rating committee process.

We note that the term "discussed", as drafted in the Proposing Release, would appear to also apply to internal fee discussions. While we appreciate the objective of this

proposal in principle, and have in place policies designed to manage this potential conflict of interest, we believe that certain levels of senior management must be able to discuss fees internally in order to effectively manage the business for which they are responsible. For example, not only are the entities that we rate dynamic (changes in the complexity of the businesses of a rated organization), the capital markets are continuously developing new products as well. The persons responsible for the commercial aspects of the business, those responsible for discussing fees with rated entities, must have access to the expertise of senior managers within the rating division in order to ensure that fees are charged commensurate with the work required to complete the ratings process. We strongly suggest that the Commission consider the position taken by the International Organization of Securities Commissions (IOSCO) on this potential conflict of interest.

3. *A Record of Rating Actions and the Requirement that they be made Publicly Available*

The Commission is proposing to amend Rule 17g-2 by adding a paragraph (8) to the Rule. The new paragraph would require an 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". The Commission is also proposing to amend paragraph (d) of 17g-2 to require that this record be made publicly available, no later than six months after the date of the rating action, on the NRSRO's corporate Internet Web site in an XBRL Interactive Data File. The purpose of the disclosure requirement is to provide users of credit ratings the raw data with which they can compare how each NRSRO initially rated an obligor or a security and how those ratings have changed over time.

We acknowledge that ratings information is of interest to users of ratings and we publish, free of charge, each current rating on our website. We do not believe, however, that NRSROs should be required to make proprietary information regarding the history of each rating available to the public free of charge. We agree with the Commission's observation that the ratings history of each rating may be useful to users of ratings in comparing NRSRO historical performance, and would not object to making this information available to interested parties, provided that the commercial value of this proprietary information is protected. We suggest that this information could be licensed or otherwise be made available to interested parties on a subscription basis by NRSROs. Additionally, we could only support the requirement to include in the XBRL database the CUSIP numbers, or any equivalent of such numbers, if the numbers can be provided free of charge and without restrictions.

4. *A Record of Material Deviation from Model Output*

The Commission is proposing to add an additional record to the recordkeeping requirements of Rule 17g-2 (amend paragraph (a)(2)) that would require an NRSRO to make a record for each rating where; "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".

The Commission has specifically identified in the Proposing Release (pages 4-27) the asset classes that should be subject to the proposed rule and its reasoning for the proposal. The Commission has not indicated any situations where corporate ratings have in any way been influenced, positively or negatively, by the use of models. To avoid putting NRSROs in the precarious position of having to decide whether any quantitative model used in the process of rating corporate entities or securities issued by such entities constitutes "a substantial component in the rating process" and/or establishing a threshold for "any material difference between the rating issued and the rating implied by the model", the Commission should narrowly tailor the proposed amendment by restricting the requirement to the category of asset-backed securities.

5. *Records Concerning Third-Party Analyst Complaints*

The Commission is proposing to amend Rule 17g-2 (new paragraph (b)(8)), which would require an NRSRO to retain any communications with respect to complaints about the performance of a credit analyst.

In addition to the proposed recordkeeping requirement, which we do not object to, the Commission also asks if it should require that NRSROs publicly disclose when an analyst has been re-assigned from the responsibility to rate an obligor or the securities of an issuer. We believe that a requirement to make such public disclosures is overly burdensome and unnecessary. Primary analysts and supervisors are assigned to cover entities/securities based on the appropriate level of expertise required to effectively evaluate a given rating situation and the analyst's portfolio workload, in order to provide the best possible analytical coverage of the rated entity. Analyst re-assignments occur in the normal course of business for many reasons including, promotions, terminations, departmental restructures, travel restrictions, or other business related reasons.

6. *Prohibition on Conflict of Interest Related to Rating an Obligor or Debt Security where the Obligor or Issuer Received Ratings Recommendations from the NRSRO or a Person Associated with the NRSRO*

The Commission is proposing to amend Rule 17g-5(c) (new paragraph (5)) that would ban an NRSRO from assigning an obligor or security rating where the NRSRO or an associated person made recommendations to the obligor or the issuer, underwriter, or

sponsor of a security with respect to the corporate or legal structure, assets, liabilities, or activities of the entity or issuer of a security.

The Commission has identified in the Proposing Release (pages 4-27), and specifically in the discussion proposing the amendment to Rule 17-5(c), the asset classes that should be subject to the proposed rule. Since the Commission has not indicated that other types of credit ratings issued by NRSROs, for example, corporate ratings, have in any way been associated with the concerns identified by the Commission as being potentially problematic, we respectfully request that the Commission clarify in its final rules that this prohibition is limited to structured finance products.

7. *Prohibition of Conflict of Interest Related to Receipt of Gifts*

The Commission's proposed amendment to Rule 17g-5 (new paragraph (c)(7)) would ban 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".

A.M. Best generally supports the Commission's proposed amendment regarding the receipt of gifts by NRSRO employees involved in the assignment of credit ratings. We note that it would be a rather uncomfortable and embarrassing exercise for employees of A.M. Best to ask obligors/issuers for itemized costs for each item "incidental" to a meeting, particularly given traditional customs in areas outside the U.S. As a result, the proposed limit of $25 per meeting may place an unreasonable burden on analysts to accurately estimate the value of all incidentals, including any food and refreshments, provided by an issuer during the ordinary course of a meeting. We also note that in cases involving large organizations, or in other instances, such as initial ratings, the agenda items to be covered may span more than one business day, and may entail material involving two or more "rated" entities. Should credit analysts consider such instances as one meeting or more than one meeting? This would appear to be an important distinction since the proposed amendment is an outright ban. We also note that the implementation of a $25 limit could not only prove to be an administrative burden but may interfere with the timely dissemination of ratings or otherwise be disruptive to the market. Rather than running the risk of underestimating values, and subject themselves to possible disciplinary action, analysts may choose to report any item(s) (such as lunches) received during the ordinary course of a meeting as being moderately in excess of the $25 limit. To remain in compliance with the rule, the NRSRO would be required to immediately withdrawal existing rating(s), or to not issue initial ratings, until the NRSRO confirms with the issuer that the value of such incidentals was actually less than $25, or, in cases where the limit was exceeded, issue a reimbursement for any amount in excess of $25. The NRSRO would then have to wait for confirmation that a reimbursement check had in fact been cashed by the issuer prior to re-issuing a prior existing rating or issue an initial

rating. We respectfully request that the Commission increase the gift limit amount to help avoid such instances and to specifically include in its examples of “incidentals” any food served during the ordinary course of a meeting, particularly since the majority of our rating meetings consist of a working lunch.

Again, we appreciate the opportunity to provide comments on the Commission’s proposed amendments and we would be happy to discuss our comments with the Commission or its staff.

Sincerely,

/s/ Larry G. Mayewski

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A.M. Best Company