



March 31, 2009

U. S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary

File No.: S7-04-09

Re: Realpoint LLC (“Realpoint”) Comments to Re-Proposing Release¹ for NRSROs

Summary:

Subscriber-paid NRSROs should never be required to publicly disclose their ratings or rating actions for free. As an alternative, Realpoint suggests a time lag of two to three years for the Commission’s suggested level of public disclosure. The time lag must take into account that a mere ten-percent sample of ratings and rating actions may constitute thousands of any one NRSROs’ ratings and ratings actions. Realpoint comments to the proposed amendments to Rule 17g-2 are intended to also apply to the Commission’s proposed disclosure requirements, under the proposed amendments to Rule 17g-5(e), for NRSROs that access the websites on which arrangers maintain the information they must provide generally to all NRSROs.

All arranger-provided information should be made available to all NRSROs at the same time that it is provided to the arranger-hired NRSROs. Unsolicited NRSROs would suffer a competitive disadvantage if the information was only provided when the information was final. That approach would not afford the unsolicited NRSROs sufficient time to review and analyze pre-sale information and provide pre-sale reports and ratings for each tranche of the new issue it wishes to rate.

Arranger, trustee, servicer and special servicer information and reports should be disclosed to NRSROs but not to unregulated credit rating agencies. Disclosure to unregulated credit rating agencies would chill the securitization market. With respect to Commercial Mortgage-Backed Security (“CMBS”), this level of disclosure to unregulated credit rating agencies would deter property owners from providing rent rolls or other property-level due diligence information to arrangers and NRSROs. Additionally, if the arranger-provided information is disclosed to unregulated credit rating agencies, unsolicited NRSROs will then have reduced incentives to provide pre-sale reports and ratings because the expected revenue from pre-sale reports and ratings might decrease while the costs to prepare them would not.

In addition to the Commission’s proposed arranger representation for pre-sale information for a security, the arranger should represent that, with respect to surveillance information, the arranger will not provide material information to arranger-hired NRSROs without simultaneously disclosing that information to other NRSROs that issued pre-sale ratings, and continue to issue surveillance ratings, for that security.

With respect to the initial credit rating process for CMBS, the Commission should require the arranger’s legal documentation to require the trustee, servicer and special servicer to provide their reports to all NRSROs. The trustee, servicer and special servicer should be prohibited from providing their reports to the arranger-hired NRSROs unless they also provide their reports to the unsolicited NRSROs.

Also with respect to a CMBS offering, Realpoint suggests that the arranger evidence which loans are considered certain to remain in the CMBS collateral pool, which loans are considered likely to be

¹ Re-Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-59343 (February 2, 2009), 74 Fed. Reg. 6485 (February 9, 2009), File No.: S7-04-09 [herein, “Re-Proposing Release”].

removed or kicked-out and which loans a B-piece buyer or other interested party has a right to remove or kick out. Realpoint also suggests that the Commission consider a procedure that would delay the pricing date and sale date of an issuance in the event of material changes to the composition of the loans included in the CMBS collateral pool. Absent material changes in the composition of the pool, a waiting period of three business days (after the pool is settled upon by the arrangers and before the initial bond issuance) would be a sufficient period prior to the initial bond issuance for unsolicited NRSROs to determine unsolicited ratings and to issue pre-sale reports to potential investors.

The Commission may wish to consider having the arranger's registration and other pre-sale information include the (i) identity of each NRSRO that bid to rate the issuance and (ii) preliminary rating levels submitted in connection with the bid. This requirement would apply to all NRSROs that bid to rate an issuance and not just to those that were actually hired to rate the issuance. This requirement would serve the public interest by enhancing the transparency of the NRSRO bidding and selection processes.

With respect to the Commission's proposed amendment to Regulation FD, Realpoint suggests that the Commission broaden the proposed amendment to permit unsolicited, subscriber-paid NRSROs to contact an arranger with questions regarding the information provided, or to be provided, on its password-protected Internet Web site for purposes of determining or monitoring a credit rating.

With respect to the list to be maintained by the arranger-paid NRSROs, Realpoint suggests that the Commission make it impermissible for the arranger-paid NRSROs to charge the unsolicited NRSROs a fee to access the information provided by this website because the addition of a material access fee to the unsolicited NRSROs' review and analysis expenses, and, in some cases, third-party data provider and due-diligence expenses, may reduce or even eliminate the utility of the proposed rule requiring the disclosure.

With respect to all ratings and rating actions disclosed under these amendments, in particular those disclosed in XBRL format on an NRSROs the Commission must permit NRSROs to include appropriate disclaimers, limitations or information regarding the effective date or age of the ratings and rating actions and the reason for or purpose of the disclosure thereof.

Proposed Amendments to Rule 17g-2

The Commission is seeking comment on whether to require each subscriber-paid NRSRO to publicly disclose (on its website in XBRL format) a randomly-selected sample of ten percent (10%) of its outstanding ratings and ratings action histories (for each registration category in which it has 500 or more outstanding ratings) with a time lag of as little as six months.²

Subscriber-paid NRSROs should never be required to publicly disclose for free their ratings or rating actions. To require unsolicited NRSROs to publish their ratings and ratings actions for free will put them out of business, resulting in a reduced number of NRSROs and thus reduced competition among NRSROs.

As an alternative, Realpoint suggests a time lag of two to three years for this level of public disclosure. The required time lag must take into account that a sample size of ten-percent of one NRSRO's ratings and rating actions may constitute well over one thousand of its ratings and ratings actions.³ A substantial

2 Re-Proposing Release at page 6487, 6489.

3 On Re-Proposing Release page 6489, the eighth question posed is: "Similarly, if commenters believe that some form of public disclosure requirement should be applied to the histories of both issuer-paid and subscriber-paid credit ratings, what percentage of the histories should each type of credit rating be required to be disclosed and what time lag should be granted? For example, should both types of credit ratings be subject to the requirement that ratings action histories be publicly disclosed for a random sample of 10% of the outstanding credit ratings in each class of credit ratings with a six month time lag? Alternatively, should ratings action histories of issuer-paid credit ratings be disclosed at a higher percentage with a longer time lag, e.g., 20%, 50% or 100% of the outstanding credit ratings and a 12, 16, or 24 month time lag? Should ratings action histories for subscriber-paid credit ratings be disclosed at a different percentage than issuer-paid credit ratings, e.g., 10%, 20%, or 50%? Commenters should provide reasons and/or data in their responses."

portion of those ratings may remain materially viable for some period of time after the periods of delay proposed by the Commission. For example, Realpoint recently reviewed approximately 500 Realpoint rating actions over the past six-months for which: (i) Realpoint assigned an “underperform” outlook to a CMBS tranche security; and (ii) such tranche security was subsequently downgraded by another NRSRO. For a significant number of these ratings, Realpoint downgraded the rating months in advance of a subsequent downgrade by other NRSROs. The data suggests that ratings and ratings actions remain viable for a significant period of time after release and that a time lag of two to three years, before public disclosure for free is required, is appropriate to protect the economic value of ratings issued by subscriber-paid NRSROs.

A longer time lag will permit NRSROs that operate using the subscriber-pay model to retain the viability of their ratings products. A longer time lag will not impair the Commission’s goal of developing historical rating actions information for use by investors, and other market participants.⁴ As long as the period of delay, for the required disclosures, is sufficient to protect the subscriber-paid NRSROs, a uniform time lag, as between issuer-paid NRSROs and subscriber-paid NRSROs, may simplify the comparisons investors and other market participants wish to make in using the data to compare the performance of issuer-paid NRSROs and subscriber-paid NRSROs. This uniformity may also avoid potential or perceived problems that may arise from offering different time lags to subscriber-paid NRSROs as compared to issuer-paid NRSROs.^{5,6}

Realpoint also suggests that the Commission provide further guidance on the ratings to be included in the sample and specifically as to whether an NRSRO may resample to provide the required sample. One reason for this request is that long-term, continuous disclosure of the same ratings may impair the continued marketability of those ratings more so than if the requisite sample size is reselected from time to time.

NRSROs compete amongst themselves, and with non-NRSRO credit rating agencies, to attract new subscribers and to maintain existing subscribers. Subscribers regularly reevaluate the value of their subscriptions. Subscribers receive detailed analytical performance summaries, “watchlist” alerts and other information about a rated security or the underlying security for that security (such as property-level reports for CMBS). The ratings action histories that the Commission seeks to require subscriber-paid NRSROs to publicly disclose is but a small part of the information demanded by, and provided to, subscribers. The analytical information, whether provided on a monthly or other recurring basis, by

4 Re-Proposing Release at page 6487 (“the purpose of this disclosure would be 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”).

5 On Re-Proposing Release page 6489, the sixth question posed is: “If there is a length of time greater than one year that would better address concerns regarding the revenues NRSROs derive from subscriber-paid credit ratings (e.g., 18 months, 24 months, 30 months, 36 months or longer), should that time lag only apply to subscriber-paid credit ratings or should it apply to both issuer-paid and subscriber-paid credit ratings?”

6 On Re-Proposing Release page 6489, the seventh question posed is: “As an alternative to adopting a final rule that applies to subscriber-paid credit ratings (along with issuer-paid credit ratings), should the Commission adopt a final rule amending paragraph (d) of Rule 17g-2 to require that an NRSRO publicly disclose credit rating actions for a random sample of 10% of the current subscriber-paid credit ratings for each class of credit rating for which they are registered and have issued 500 or more ratings? If the Commission were to adopt such an amendment, would the time lag of six months in the rule being adopted today be sufficient to address concerns regarding the revenues NRSROs earn from selling subscriptions to their subscriber-paid credit ratings. If not, should the Commission adopt an amendment to paragraph (d) of Rule 17g-2 that extends the time lag to a longer period of time for subscriber-paid credit ratings (e.g., 12 months, 18 months, 24 months, 30 months, or 36 months or longer)? Are there other ways that the Commission could adjust the requirements of the proposed rule to apply a public disclosure requirement to ratings action histories of subscriber-paid credit ratings? Commenters should provide reasons and/or data for why a certain time lag is appropriate.”

watchlist alerts or by other means, are more important to sophisticated, knowledgeable investors and other market participants than mere unsupported letter-code or similar rating designations.^{7, 8}

Given the competition among subscriber-paid NRSROs to attract and maintain clients, there appears to be little benefit to requiring these NRSROs to publicly disclose their ratings for free. The cost of the public disclosure requirements may far exceed the benefits, if that cost is a reduction in the number of NRSROs.⁹ Unsolicited NRSROs are already accountable to their clients for performance on an ongoing basis because unsolicited NRSROs must continuously perform surveillance, maintain current ratings and give notice of rating actions rather than provide one-time or annually-updated ratings.¹⁰

Subscriber-paid NRSROs must also constantly respond to the challenge of developing new ratings products and revenue sources. To market its services, a subscriber-paid NRSRO may wish to provide a client or potential client with its ratings track record for certain securities. In the current financial climate, NRSROs can expect to have client and potential clients request this type of information, regardless of whether the Commission requires public disclosure of a sample of this information.¹¹ In this context, however, the NRSRO can attempt to require the client or potential client to maintain the confidentiality of the information provided. Thus, an NRSRO may disclose historical information, regarding its ratings track record, to its clients and potential clients towards the goal of increasing or retaining revenue sources.¹²

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- 7 On Re-Proposing Release page 6489, the fourth question posed is: “Similarly, do subscribers value ratings action histories for subscriber-paid credit ratings? Do subscribers value the in-depth analysis that is delivered with a rating action? How material is the value that subscribers place on the historical rating action itself as compared to the value they place on the in-depth analysis or materials that are delivered along with the rating action? Do commenters believe that the business of an NRSRO that determines subscriber-paid credit ratings would be materially compromised if the ratings action histories for the ratings were required to be publicly disclosed (but not the in-depth analysis or other materials)?”
 - 8 On Re-Proposing Release page 6489, the fifth question posed is: “Do persons who subscribe to NRSROs’ subscriber-paid credit ratings value the current ratings only? Alternatively, do they subscribe to the ratings because subscriber-paid credit ratings identify trends sooner than issuer-paid credit ratings as some suggest? For example, do commenters believe the fact that the determination and monitoring of subscriber-paid credit ratings are funded by subscribers mean the NRSROs act more quickly to adjust the credit ratings? If so, would disclosing a rating action one year after it occurred reveal information that a subscriber otherwise would pay for in order to make a credit assessment or has the rating action become sufficiently stale that its value, if any, is limited to it being an item of historical information. If a credit rating action with respect to a subscriber-paid credit rating has intrinsic value beyond providing historical perspective, would this intrinsic value still exist two years after the rating action? If so, what length of delay would be sufficient to address NRSROs’ concerns regarding the loss of revenues from subscribers for access to their subscriber-paid credit ratings, while also achieving the Commission’s goals, among others, of increasing accountability and promoting competition among NRSROs? What effect would subjecting subscriber-paid credit ratings to the rule’s requirements have on competition? Would it compromise the viability of NRSROs that determine subscriber-paid credit ratings? For example, to what extent, if any, would subjecting subscriber-paid credit ratings to the rule’s requirements undercut competition by erecting barriers to entry or otherwise compromise the viability of NRSROs that determine subscriber-paid credit ratings?”
 - 9 On Re-Proposing Release page 6489, the first question posed is: “Should the proposed amendments apply equally to issuer-paid and subscriber-paid credit ratings? For example, in what ways and to what extent might the objectivity of NRSROs in determining subscriber-paid credit ratings be impaired because of conflicts of interest? What would be the benefits for applying the rule’s requirements to subscriber-paid credit ratings? What would be the costs of applying the rule’s requirements to subscriber-paid credit ratings?”
 - 10 On Re-Proposing Release page 6489, the second question posed is: “Are the goals of the rule—greater accountability of NRSROs and promotion of competition—achievable if subscriber-paid credit ratings are not subject to the rule’s requirements? How would these goals be enhanced if subscriber-paid credit ratings were subject to the rule’s requirements?”
 - 11 On Re-Proposing Release page 6489, the ninth question posed is: “What diligence do potential subscribers to subscriber-paid credit ratings perform in deciding whether to subscribe to such ratings of a particular NRSRO? To what extent do NRSROs make ratings histories of subscriber-paid credit ratings available to potential subscribers? To what extent and in what ways are NRSROs that determine subscriber-paid credit ratings subject to competitive pressures? To what extent does the interest in developing a reputation for accuracy discipline the accuracy of an NRSRO that determines subscriber-paid credit ratings?”
 - 12 On Re-Proposing Release page 6489, the third question posed is: “Do NRSROs derive revenues from selling information about ratings action histories for subscriber-paid credit ratings? If so, are those revenues material as compared to revenues

Proposed Amendments to Rule 17g-5(a)(3)(i) and Rule 17g-5(a)(3)(ii)

The Commission intends for its amendments to Rule 17g-5(a)(3)(i) to require each issuer-paid NRSRO to maintain a list, on a password-protected Internet Web site, of each structured finance security for which it currently is in the process of determining an initial credit rating, which identifies the type of security, the name of the issuer, the date the rating process was initiated and the Internet Web site address where the arranger-provided information for the initial rating process can be accessed. Realpoint supports this proposed amendment.

Realpoint suggests that: (a) this website also disclose the estimated or target issue date of the securities listed (with required updates to such information as dates change); and (b) the address of this website be disclosed in the NRSRO's Form NRSRO and not changed without prior notice to the Commission and the other NRSROs.¹³

Realpoint suggests that the Commission make it impermissible for the solicited, arranger-paid NRSROs to charge the unsolicited, subscriber-paid NRSROs fees to access the information listed in this website.¹⁴ Unsolicited NRSROs who are informed of a potential offering by means of this website will need to dedicate significant resources and incur substantial expenses to review and analyze that information and provide pre-sale reports and ratings for each tranche of the new issue it wishes to rate. With respect to CMBS, even though the collateral pool may change during the pre-sale period, one reason that unsolicited NRSROs may be willing to commence property-level due diligence prior to the final determination of the pool (as well as the related legal documentation and other relevant information) is that the arranger-provided information is made available to NRSROs for no charge. If a material access fee is added to the unsolicited NRSROs' review and analysis expenses, and, in some cases, third-party data provider and due-diligence expenses, that access fee may reduce or even eliminate the utility of the proposed rule requiring the disclosure.

The Commission intends for investors to benefit from these requirements. Ultimately, investors will bear underlying costs of these requirements. Arrangers are in a better position than NRSROs to pass the underlying costs through to investors. Arranger-paid NRSROs may be able to pass-through to the arrangers their incremental costs of maintaining this website.

Proposed Amendments to Rule 17g-5(a)(3)(iii)(A)

The Commission intends for its amendments to Rule 17g-5(a)(3)(iii)(A) to require each arranger to disclose which information, on its password-protected Internet Web site, is current or final (for the purpose of determining the initial credit rating) and to represent that it has complied with this requirement. Realpoint supports this proposed amendment and agrees with the Commission that the information should be made available to all NRSROs as it is provided to the hired NRSROs.

Unsolicited NRSROs would be at a disadvantage if the information was only provided when the information was final because that approach would not afford the unsolicited NRSROs sufficient time to

they receive from selling subscriptions to current subscriber-paid credit ratings? Commenters providing information should quantify and breakout the amount of revenues earned by NRSROs in dollars and/or percentages for each of the following: (1) Selling subscriptions to all current subscriber-paid credit ratings; and (2) selling information about ratings actions histories of subscriber-paid credit ratings."

13 On Re-Proposing Release page 6494, the first two questions posed are: (i) "Would the information required to be maintained on the NRSRO's Internet site be sufficient to alert other NRSROs that the rating process has commenced and where they can locate information to determine an unsolicited rating? For example, should the rule require the NRSRO to alert by e-mail all NRSROs that obtain a password to access the site when new information is posted to the site? Would such a requirement be feasible?" and (ii) "Are there specific requirements that the Commission could put into the rule text to clarify how the information should be presented on the NRSRO's Internet Web site?"

14 On Re-Proposing Release page 6494, the third question posed is: (i) "Should the NRSRO maintaining the Internet Web site be permitted to charge a fee for other NRSROs to access it? For example, should they be permitted a fee to recover some or all of their costs for maintaining the Internet Web site?"

review and analyze that information and provide pre-sale reports and ratings for each tranche of the new issue it wishes to rate. Provided that the website is properly maintained, there is little or no risk of unsolicited NRSROs using outdated information in their ratings processes.

Realpoint suggests that the Commission further clarify the information requirements to provide that all of the information made available to the arranger-paid NRSRO would be made available to the other NRSROs not only at the same time but also in the same manner, and with same search, access and other capabilities, as it is made available to the arranger-paid NRSRO.¹⁵

Proposed Amendments to Rule 17g-5(a)(3)(iii)(B)

The Commission has previously stated that its goals include the creation of a level playing field for unsolicited NRSROs to provide timely credit ratings to potential investors in a new bond issue. Towards that goal, the Commission proposes to require arrangers to simultaneously disclose to all NRSROs (and only to NRSROs) all information that the arrangers provide to their solicited NRSROs to develop credit ratings.¹⁶ Realpoint supports this proposed amendment and its limitation of disclosures to NRSROs.

Disclosure to unregulated credit rating agencies would chill the securitization market. Requiring this level of disclosure would permit an unregulated credit rating agency to sell or disclose arranger-provided information without the obligation to annually execute and furnish to the Commission the additional annual certification under proposed Rule 17g-5(e). With respect to CMBS, requiring this level of disclosure would deter property owners from providing rent rolls or other property-level due diligence information to arrangers and NRSROs.¹⁷

Additionally, if the arranger-provided information is disclosed to unregulated credit rating agencies, unsolicited NRSROs will then have reduced incentives to provide pre-sale reports and ratings because the expected revenue from pre-sale reports and ratings might decrease while the costs to prepare them would not. Unsolicited NRSROs would thus have reduced incentives to incur the significant review and analysis expenses, or third-party data provider and property-level due-diligence expenses, necessary to prepare thorough pre-sale reports and ratings. To require or permit the arranger-provided information to also be disclosed to unregulated credit rating agencies may therefore reduce, or even eliminate, the utility of the proposed rule requiring the disclosure.¹⁸ To require or permit the arranger-provided information to also be disclosed to unregulated credit rating agencies would not level the playing field for unsolicited NRSROs because unsolicited NRSROs would incur, and unregulated credit rating agencies would not

15 On Re-Proposing Release page 6495, the first question posed is: "Should the Commission only require that final information be posted on the Internet Web site to avoid the potential that an NRSRO would use erroneous information to determine a credit rating?"

16 Re-Proposing Release at page 6492 *et seq.*

17 The Commission noted numerous "concern[s] with the disclosure of proprietary information" voiced by commenters. Many "commenters were concerned that if issuers and underwriters were forced to disclose proprietary information, they would instead choose not to share this information with the NRSROs, which could affect the accuracy of the rating. Commenters also were concerned that disclosing the information could create liability issues under Sections 11 and 12 of the Securities Act, particularly if the disclosing party is not the issuer or originator or if the information disclosed was not prepared for the purpose of being used as offering materials. At least one commenter was concerned that if the information was presented to investors outside the context of a disclosure document, there would be significant risk that investors might misinterpret the data. Other commenters raised concerns that disclosing the information could violate foreign law or, at the very least, put U.S. credit rating agencies at a disadvantage to compete in foreign markets where other credit rating agencies are not subject to the same disclosure requirements. One NRSRO stated that if it were forced to disclose information on offshore offerings, it would have to withdraw from registration as an NRSRO in certain classes. Re-Proposing Release at page 6491-6492 (footnotes omitted).

18 On Re-Proposing Release page 6495, the second question posed is: "Should other entities besides NRSROs be permitted to access the arrangers' Internet Web sites? For example, should credit rating agencies not registered with the Commission be permitted to access the sites? If so, how could the amendment be crafted to ensure that only entities meeting the definition of "credit rating agency" in Section 3(a)(61) of the Exchange Act be permitted to access the arrangers' Internet Web sites?"

incur, the compliance and other costs associated with registration, potentially causing NRSROs to withdraw registrations or discourage credit rating agencies from seeking registration”¹⁹

Disclosure to unregulated credit rating agencies would also allow an unregulated credit rating agency to publicly disclose ratings without having published its track record, rating procedures and methodologies, and other information required to be disclosed by NRSROs. Even if the unregulated credit rating agency had disclosed its rating procedures and methodologies, it could issue ratings that were not developed in accordance therewith without being subject to examination under 15 U.S.C. § 78q(b) or Rule 17 CFR § 240.17g-2. With respect to structured finance products, and, in particular, CMBS, ratings are developed after extensive review and analysis of ABS informational and computational materials such as underlying property information and other loan-level information and additional data, research or due diligence reports purchased or developed by the rating agency. With respect to the underlying basis for, and the integrity of, ratings, the Commission’s proposal would create confusion in the capital markets. That approach is therefore inconsistent with “[t]he purposes of the Credit Rating Agency Reform Act of 2006,” which “are to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry.”²⁰ Consistent with the Commission’s observations regarding the potential effects of imposing rating and rating action disclosure requirements on subscriber-paid NRSROs, “this could reduce competition by causing NRSROs to withdraw registrations or discourage credit rating agencies from seeking registration”²¹ or reduce competition by causing NRSROs not to compete to provide costly unsolicited pre-sale reports.

Proposed Amendments to Rule 17g-5(a)(3)(iii)(C), (D)

The Commission proposes to require the arranger: (i) to post “on its password-protected Internet Web site all information the arranger provides to the NRSRO for the purpose of [(a)] determining the initial credit rating”²² or (b) “undertaking credit rating surveillance”²³ and, in connection with the initial credit rating, (ii) to represent that it will not provide any information to the hired NRSRO that is material without also disclosing that information on the password-protected Internet Web site.²⁴ Realpoint supports this amendment and also suggests that the Commission consider a requirement that, in connection with credit rating surveillance for a security, an arranger represent that it will not provide material information to arranger-hired NRSROs without simultaneously disclosing that information to other NRSROs that issued pre-sale ratings, and continue to issue surveillance ratings, for that security. The Commission’s proposed requirements, and the additional requirement suggested in the preceding sentence, are “necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act,”²⁵ and consistent with the Commission’s goals to “foster greater accountability,” “mak[e] it easier for persons to analyze the actual performance of credit ratings,” “enhance[] the transparency of the results of the[] rating processes” and “encourage competition within the industry.”²⁶

19 Re-Proposing Release at page 6487.

20 Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, Release No. 34-55857, SEC File No. S7-04-07, 72 Fed. Reg. 33564 (June 18, 2007). “Increased confidence in integrity of NRSROs and the credit ratings they issue could promote participation in the securities markets. Better quality ratings could also reduce the likelihood of an unexpected collapse of a rated issuer or obligor, reducing risks to individual investors and to the financial markets.” *Id.*; See Re-Proposing Release at page 6488.

21 Re-Proposing Release at page 6487.

22 Re-Proposing Release at page 6495.

23 Re-Proposing Release at page 6496.

24 On Re-Proposing Release page 6496, the first question posed is: “Should the amendment require the arranger to represent that it will not provide any information to the hired NRSRO that is material without also disclosing that information on the Internet Web site?”

25 Re-Proposing Release at page 6487.

26 Re-Proposing Release at page 6488.

The Commission may wish to consider having the arranger's registration and other pre-sale information include the (i) identity of each NRSRO that bid to rate the issuance and (ii) preliminary rating levels submitted in connection with the bid. This requirement would apply to all NRSROs that bid to rate an issuance and not just to those that were actually hired to rate the issuance. This requirement would serve the public interest by enhancing the transparency of the NRSRO bidding and selection processes.

Realpoint does not see a need for the Commission to specify a standardized list of minimum information requirements for either initial or surveillance ratings,²⁷ provided that the Commission also broadens the proposed amendments to Regulation FD to permit unsolicited, subscriber-paid NRSROs to contact arrangers with questions regarding the information provided, or to be provided, for purposes of determining or monitoring credit ratings. The markets are more nimble than the Commission at suggesting or demanding information requirements for securities offerings. Industry groups (for example, with respect to CMBS, the Commercial Mortgage Securities Association) have developed and will continue to develop standards that are commonly used or accepted in the markets. The Commission may rely on existing NRSRO recordkeeping requirements to determine from time to time whether an unintended effect of increased disclosure requirements is a reduction in the scope of the information on which any or all ratings are based. For asset-backed securities, the principles and standards of Regulation AB apply. With respect to an initial issuance of CMBS, an unsolicited NRSRO needs access to the arranger-provided loan summaries, property summaries and property-level due diligence items (including operating statements, leases, appraisals, inspection and other reports).

With respect to CMBS surveillance ratings, an unsolicited NRSRO needs access to the trustee, servicer and special servicer reports, as well as all property-level due diligence information and reports (such as operating statements, appraisals, re-appraisals and inspection reports) provided by third-party vendors to the arrangers.²⁸ To accomplish this result, the Commission should impose requirements on the trustee, servicer and special servicer as well as the arranger. In addition to requiring the arranger to provide its reports and information to all NRSROs, the Commission should require the arranger's legal documentation (for example, the pooling and servicing agreement) to require the trustee, servicer and special servicer to provide their reports and information to all NRSROs. In addition, the Commission should prohibit the trustee, servicer and special servicer from providing their reports and information to the arranger-hired NRSROs unless they also provide the same reports and information to the unsolicited NRSROs. The first aspect of these suggested requirements prospectively addresses new issuances, in that future legal documentation would memorialize this requirement. The second aspect of these suggested requirements is intended to address currently-outstanding securities.

The following suggestions are made with respect to an initial issuance of CMBS to prevent potential manipulation of the CMBS collateral pool by arranger parties to discourage or delay the efforts of unsolicited NRSROs. Realpoint suggests that the Commission require the arranger, during the initial credit rating process, to evidence which loans are considered certain to remain in the CMBS collateral pool, which loans are considered likely to be removed or kicked-out and which loans a B-piece buyer or other interested party has a right to remove or kick out.

Realpoint also suggests that the Commission consider a procedure that would delay the pricing date and sale date of an issuance in the event of material changes to the composition of the loans included in the pool. Although the composition of the loans included in the pool may change between the release of the initial data tape to the solicited NRSROs and the pricing date, in the past, the pool has not materially

27 On Re-Proposing Release page 6496, the second and fourth questions posed are: "For the purposes of this amendment, should the Commission provide a standardized list of information that, at a minimum, should be disclosed? If so, what information should the list include? Do any commenters believe that this would have the effect of impermissibly regulating the substance of credit ratings and the methodologies used to determine credit ratings?"

28 On Re-Proposing Release page 6496, the third question posed is: What type of information for monitoring ratings of structured finance products is typically provided by arrangers to NRSROs? What type of information is typically obtained by NRSROs contracting with third-party vendors?"

changed during this pre-sale time period. Absent material changes in the composition of the pool, a waiting period of three business days (after the pool is settled upon by the arrangers and before the initial bond issuance) would be a sufficient period prior to the initial bond issuance for unsolicited NRSROs to determine unsolicited ratings and to issue pre-sale reports to potential investors. The purpose of this potential period of delay would be intended to discourage arrangers from intentionally changing, or not finalizing, the pool to delay the efforts of unsolicited NRSROs to produce pre-sale reports.

Proposed Amendments to Rule 17g-5(e)

Realpoint reiterates its comments to the proposed amendments to Rule 17g-2, set forth at pages 2 to 4 above, as comments to the Commission's proposed disclosure requirements, under the proposed amendments to Rule 17g-5(e), for NRSROs that access the websites on which arrangers maintain the information they must provide generally to all NRSROs.

Realpoint thus is suggesting a minimum of no more than ten percent (10%) for the minimum sample-size, and a period of delay of two to three years prior to which each NRSRO is required to publicly disclose (on its website in XBRL format) for free, for the randomly-selected sample of its credit ratings that were determined using the information posted on these arranger Internet Web sites.²⁹ Regarding this minimum sample size, which the Commission has initially established it at ten percent (10%), Realpoint believes that it should remain at zero percent (0%) but in no case should it be no more than ten percent (10%). Regarding the period of delay for the public disclosure of these ratings, Realpoint believes that the period should be at least two to three years, in contrast to the Commission's suggested period of six months or one year. In connection with both of these requirements, Realpoint believes that the sample size and period of delay should be consistent with those under the proposed amendments to Rule 17g-2, taking into account Realpoint's comments thereto set forth at pages 2 to 4 above.

An unsolicited, subscriber-paid NRSRO will need to dedicate significant resources and incur substantial expenses to determine an initial credit rating and issue a pre-sale report. Such NRSRO may wish to review the proposed offering on a preliminary basis and then seek to determine whether its client base has interest in pre-sale reports for that offering. In some cases, an NRSRO may access information and then determine, based on input from its clients, that it will be unprofitable for the NRSRO to determine an initial credit rating and issue a pre-sale report for tranche securities in that offering. In some cases, an NRSRO may determine based on the level of market activity that it will be unprofitable for the NRSRO to determine an initial credit rating and issue a pre-sale report for tranche securities in that offering. For example, in a low-volume market, the NRSRO may determine that there will be insufficient demand for an offering and thus insufficient demand for a pre-sale report from an unsolicited NRSRO for that offering. In a high-volume market, despite significant investor interest in an offering, the NRSRO may determine that there will be insufficient demand for its pre-sale because investors are willing to make an investment decision without the benefit of a pre-sale report from an unsolicited NRSRO (as was the case earlier in this decade). Realpoint appreciates the reasons for the Commission's desire to establish a minimum threshold to demonstrate that the arranger-posted information is being used to foster the Commission's goals; however, that threshold should not be set at a level that, with respect to subscriber-paid NRSROs, "could reduce competition by causing NRSROs to withdraw registrations or discourage credit rating agencies from seeking registration"³⁰ or reduce competition by causing NRSROs not to compete to provide costly unsolicited pre-sale reports.

29 On Re-Proposing Release page 6497, the first question posed is: "Should the minimum requirement for the number of credit ratings that must be determined using the information posted on arranger Internet Web sites be higher than 10% of the deals reviewed? For example, should it be 15%, 20%, 50% or a larger percentage? Alternatively, should the requirement be less than 10%? For example, should it be 5% or 2%?"

30 Re-Proposing Release at page 6487.

For these same reasons, Realpoint does not see a need to prohibit an NRSRO from accessing information for a prescribed period of time solely based on a failure, by that NRSRO, to determine credit ratings for a certain percentage of the deals reviewed during a period prior thereto.³¹

With respect to all ratings and rating actions disclosed under these amendments, in particular those disclosed in XBRL format on an NRSROs the Commission must permit NRSROs to include appropriate disclaimers, limitations or information regarding the effective date or age of the ratings and rating actions and the reason for or purpose of the disclosure thereof.

With respect to the additional annual certification under proposed Rule 17g-5(e), by NRSROs that access arranger password-protected Internet Web sites,³² Realpoint requests additional clarification from the Commission regarding the: (a) number of securities for which information was accessed; and (b) timing of the determination of whether each such security was issued. Access that is incidental to access to determine or monitor credit ratings for any or all of the tranche securities should be disregarded.

Regarding the number of securities (for which information was accessed), an NRSRO might access a website but do so to only rate a portion of the tranche securities to be issued. A substantial portion of the information provided may relate to all of the tranche securities to be issued. For example, a pool typically comprises investment and non-investment grade tranches. An NRSRO might wish to access the information provided for the pool to only rate the investment grade tranches. Property-level documentation, legal documentation and other relevant information may relate to all of the tranche securities to be issued. In such a case, the number of issued securities for which information was accessed should be based on the number of tranche securities for which the NRSRO accessed information for the purpose of determining or monitoring credit ratings and not necessarily the number of tranche securities to be issued.

Similarly, if an NRSRO were to access a website only to evaluate whether to determine or monitor credit ratings for any or all of the tranche securities, and it elected not to rate such securities, the number of issued securities for which information was accessed should not include the number of tranche securities for which the NRSRO accessed information solely to determine whether to issue credit ratings thereon.

Proposed Amendments to Regulation FD Rule 100(b)(2)(iii)

The Commission's proposed amendment to Regulation FD is necessary to permit: (a) disclosures by arrangers to unsolicited, subscriber-paid NRSROs; and (b) an unsolicited, subscriber-paid NRSRO to deliver pre-sale reports solely to its subscribers.³³ Realpoint previously opined, in this regard, in Realpoint's comments to SEC File No. S7-13-08³⁴ and SEC File No. S7-18-08.³⁵

31 On Re-Proposing Release page 6497, the second question posed is: "If an NRSRO accesses information 10 or more times in a calendar year and does not determine credit ratings for 10% or more of the deals reviewed, should the NRSRO be prohibited from accessing the NRSRO and sponsor information in the future? If so, should the NRSRO be prohibited from accessing the information for a prescribed period of time (e.g., 6 months, 12 months, 18 months, 24 months or some longer period)?"

32 Re-Proposing Release at page 6496.

33 On Re-Proposing Release page 6497, the third question posed is: "Is the proposed change to Regulation FD necessary or appropriate? Would a different approach work better? For instance, would it be better to revise the exception in Regulation FD to apply to any information given to any NRSRO so long as the ratings of at least one NRSRO are publicly available."

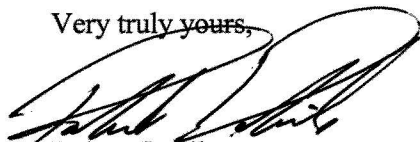
34 Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-57967, 73 Fed. Reg. 36212 (June 25, 2008), File No. S7-13-08

35 Security Ratings, Release 34-58071, 73 Fed. Reg. 40106 (July 11, 2008), File Number S7-18-08.

Realpoint suggests that the amendment be further broadened³⁶ to permit unsolicited NRSROs to contact an arranger with questions regarding the information provided, or to be provided, on its password-protected Internet Web site for purposes of determining or monitoring a credit rating. As part of its response, thereto, the arranger would be expected to post any additional material information on its password-protected Internet Web site. In connection with the Commission's proposed amendment to require arrangers to post all material credit-rating information on its password-protected Internet Web site, "if the amendment is adopted, the Commission would review whether arrangers started providing information about the structured finance product orally to avoid having to disclose it on their Internet Web sites. The Commission believes that ultimately this would not benefit the arranger since the NRSROs developing credit ratings through using the Internet Web sites would be basing their ratings without the benefit of all of the information. This could adversely impact the ratings and lead to more frequent rating actions during the surveillance process when the securities or money market instruments do not perform as anticipated.³⁷ Permitting unsolicited NRSROs to contact an arranger with questions "enhance[s] the transparency of the results of the[] rating processes" and "encourage[s] competition within the industry."³⁸

Thank you for the opportunity to comment on the Re-Proposing Release. Please do not hesitate to contact us if you have any questions.

Very truly yours,



Robert Dobilas,
CEO and President,
Realpoint LLC

36 On Re-Proposing Release page 6497, the fourth question posed is: "Should the Commission broaden the exclusion to information that is provided to NRSROs beyond the proposed Rule 17g-5 disclosure program (*e.g.*, information provided to develop ratings for corporate issuers)?"

37 Re-Proposing Release at page 6495.

38 Re-Proposing Release at page 6488.