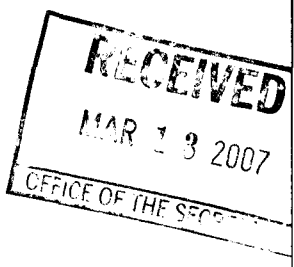
43



March 12, 2007

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Attention: Ms. Nancy M. Morris, Secretary

Re: File No. S7-04-07 – Oversight of Rating Agencies Registered As Nationally Recognized Statistical Rating Organizations

Ladies and Gentlemen:

I am submitting this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments on the Commission's proposed rule regarding the Oversight of Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations (Release No.34-55231) (the "Proposed Rule."). I would like to request clarification by the Commission with respect to the status of presale reports published by rating agencies under the federal securities laws. Notwithstanding the Securities Offering Reform Release (Release No. 33-8591; 34-52056; IC-26993; International Series Release No. 1294), rating agencies have continued to publish on their publicly available Internet websites presale reports on structured products that are offered by foreign investment funds pursuant to the exemptions from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), provided by Section 4(2) of the Securities Act and Regulation D and Rule 144A under the Securities Act and by Regulation S under the Securities Act. These structured products are also offered in the United States pursuant to the exemptions from the registration requirements of the Investment Company Act of 1940, as amended (the "Investment Company Act"), provided by Section 3(c)(7) of the Investment Company Act.

In the Proposed Rule, please confirm that the issuance by rating agencies of presale reports on rated securities, the broad dissemination of such reports through publication on rating agencies' Internet websites, the issuance by rating agencies of press releases with respect to their presale reports and the participation in the rating process by issuers and other offering participants, including by providing information to the rating agencies, commenting on the factual accuracy of rating agency reports and paying rating fees, does not constitute:

(1) a communication for which disclosure would be required under section 17(b) of the Act as a result of consideration given or to be given, directly or indirectly by or on behalf of an issuer or other offering participant or an "offer" by the issuer or such other offering participant within the meaning of Section 5(c) of the Securities Act;

(2) a "public offering" within the meaning of Section 4(2) of the Securities Act or Section 3(c)(7) of the Investment Company Act, an "offer" of a security by a form of "general solicitation" or "general advertising" for purposes of Rule 502(c) of Regulation D under the Securities Act or an "offer" of a security within the meaning of Rule 144A under the Securities Act; or

(3) an "offer" or "directed selling efforts" in the United States for purposes of Rule 903 of Regulation S under the Securities Act.

Presale Reports

In a comment letter responding to the Commission's Concept Release regarding Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws (Release Nos. 33-8236; 34-47972; IC-26066), a commenter described the rating process as follows:

> We have become aware that rating agencies frequently prepare presale reports for transactions that they rate. The presale reports describe the offering, the rating agency's preliminary rating and the rating agency's rationale for the preliminary ratings they assign to the issue. The rating agencies issue press releases announcing their preliminary ratings and a brief description of the transaction. The presale reports are posted on the rating agencies' websites and the press releases are issued before the pricing of the offering, i.e., while the offering is being marketed. We understand that practices of the rating agencies with respect to permitting access to their websites are not uniform. In some cases, the presale reports are available to anyone who visits the websites and who provides identifying information and in other cases access to the presale reports is limited to subscribers. However, we believe that none of the rating agencies restricts access to these websites to investors who have established their sophistication and status as accredited investors or qualified institutional buyers.[1]

The commenter went on to state:

> As is documented in the Report[2], issuers and broker-dealers participating in the distribution of an issuer's securities today play an active role in the rating process. The issuer and the broker-dealer acting as underwriter, initial purchaser or selling agent provide the rating agencies detailed information concerning the issuer and the securities and meet with and answer questions posed by the rating agencies. The issuer or the underwriter, initial purchaser or agent may also be asked to review and confirm the factual accuracy of a draft of a rating agency report or a related press release of a rating agency. While the issuer or the underwriter, initial purchaser or agent will usually initiate contact with the rating agencies, the rating agencies regard themselves as being independent of the issuers. The rating agencies impose a fee on the issuer for the initial rating and the continuing coverage. While the issuer compensates the rating agencies, the rating agencies believe that this does not affect their independence.[3]
>
> On its publicly available Internet website, one of the rating agencies describes its fees as follows:
>
> Standard & Poor's Ratings Services ("Ratings Services") receives compensation for engaging in analytic activities that may result in the assignment of a credit rating. Such compensation is normally paid by the issuers of the securities or third parties participating in marketing the securities. Ratings Services receives this compensation to enable it to perform credible credit analyses. The receipt of this compensation has no influence on an analyst's opinion or other analytic processes....
>
> Ratings Services does not receive payments from issuers or third parties for disseminating ratings including, but not limited to, publishing the ratings and any related analyses or commentaries in Ratings Services' electronic or print subscription services or posting the ratings or any related materials on its website, or providing any analyses to third parties as a part of Ratings Services' marketing activities.

---

[1] See the Letter of P. Ingerman dated July 28, 2003 at p. 2.

[2] The Commission's Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, As Required by Section 702(b) of the Sarbanes Oxley Act of 2002, January 2003.

[3] See the Letter of P. Ingerman dated July 28, 2003 at pp. 2-3.

> Ratings Services charges subscription and license fees for its publications, software and information products...[4].

The disclosure on the Website indicates that Standard & Poor's charges rating fees of up to 12 basis points of the principal amount of structured finance securities rated and that higher fees apply to more complex transactions.[5] I believe that such rating fees are often paid at the closing of an offering of rated securities out of the proceeds from the sale of the rated securities and that the closing of the offering is typically conditioned on the receipt of certain ratings with respect to the rated securities.

Credit Ratings on securities, such as structured products, are assigned in rating letters and are subject to the standard terms and conditions enclosed with the rating letter. In its standard terms for U.S. Structured Finance Ratings, one of the rating agencies states:

> As a matter of policy, Standard & Poor's publishes ratings for all public issues and 144A issues in the U.S. market. Standard & Poor's may release analytical reports describing the transaction and explaining the basis of our rating in our sole discretion, *and we acknowledge that these reports are not issued by or on behalf of you or at your request.*[6] (emphasis added)

In order to obtain ratings, issuers of privately offered structured products are required to agree to those terms.

Applicable Law

Many structured products cannot be readily registered under the Securities Act and the Investment Company Act because these securities are offered by highly leveraged, actively managed, foreign special purpose vehicles that include synthetic securities, such as credit derivatives, among their assets. For similar reasons, these vehicles do not qualify as "asset-backed securities" within the meaning of Regulation AB under the Securities Act or Rule 3a-7 under the Investment Company Act. Consequently, the special purpose vehicle, rather than its sponsor or depositor, may be the "issuer" of securities within the meaning of the Securities Act. Investors in the securities issued by these special purpose vehicles have limited recourse only to the assets of the special purpose vehicle.

For the foregoing reasons, issuers of many structured products offer securities in the United States pursuant to the exemptions from the registration requirements of the Securities Act provided by Section 4(2) of the Securities Act and Regulation D and Rule 144A under the Securities Act and the exemption from the registration requirements of the Investment Company Act provided by Section 3(c)(7) of the Investment Company Act. These securities are also offered outside of the United States in offshore transactions pursuant to the exemptions from the registration requirements of the Securities Act provided by Regulation S under the Securities Act.

Foreign Issuers

In the Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore (Release Nos. 33-7516; 34-39779; IA-1710; IC-23071; International Series Release No. 1125) (the "1998 Release"), the Commission stated that:

> Foreign issuers commonly make offshore offerings concurrently with private offerings to U.S. institutional buyers. An offering exempt under Section 4(2) of the Securities Act may not involve "any public offering." Regulation D specifically prohibits the offer or sale of securities through a

---

[4] See Standard & Poor's Ratings Services U.S. Ratings Fees Disclosure at p. 1.
[5] See Standard & Poor's Ratings Services U.S. Ratings Fees Disclosure at p. 2.
[6] See Standard & Poor's Ratings Services Terms and Conditions Applicable To U.S. Structured Finance Ratings at p. 1.

> "general solicitation or general advertising." Publicly accessible website postings may not be used as a means to locate investors to participate in a pending or imminent U.S. offering relying on those provisions. If a website posting would be inappropriate for a U.S. private placement, an issuer should not attempt to accomplish the same result indirectly through the posting of an offshore Internet offer.

In the 1998 Release, the Commission also specifically addressed offerings by foreign funds:

> We would not consider a foreign fund that is concurrently conducting both a private U.S. offer and an offshore Internet offer to be making a public offer of its securities in the United States if the foreign fund implements measures reasonably designed to guard against public sales of its securities to U.S. persons *and the Internet offer is not indirectly used as a general solicitation for participants in the private U.S. offer.* (emphasis added)

In the 1998 Release, the Commission also expressed the same concerns with respect to third parties that act by or on behalf of an issuer.

> *Offers*
>
> In its Securities Offering Reform Release (Release Nos. 33-8591; 34-52056; IC-26993; International Series Release No. 1294) (the "Securities Offering Reform Release"), the Commission noted the broad definition of "offer" contained in the Securities Act. At footnote 88, the Commission stated:
>
> > Securities Act Section 2(a)(3) [15U.S.C.77b(a)(3)] defines "offer" as any attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The term "offer" has been interpreted broadly and goes beyond the common law concept of an offer. See *Diskin v. Lomasney & Co.*, 452 F.2d 871 (2d. Cir. 1971); *SEC v. Cavanaugh*, 1 F. Supp. 2d 337 (S.D.N.Y. 1998). The Commission has explained that "the publication of information and publicity efforts, made in advance of a proposed financing which have the effect of conditioning the public mind or arousing public interest in the issuer or in its securities constitutes an offer..." *Guidelines for the Release of Information by Issuers Whose Securities are in Registration*, Release No. 33-5180 (Aug. 16, 1971) [36 FR 16506].

At footnote 207, the Commission provided the following guidance with respect to determining when communications are considered "offers" attributable to an offering participant within the meaning of the Securities Act:

> Whether a particular communication constitutes such an offer will continue to be determined based upon the particular facts and circumstances. While the definition of "offer" is broad, not all communications relating to an offering are offers or offers by an offering participant. As a non-exclusive illustration, the gun-jumping provisions have been administered in a manner that *excludes from categorization as an offer a media publication or television or radio broadcast that is based solely on information that is filed with us or available on an unrestricted basis or on other information the dissemination of which did not represent an offer by an issuer or other offering participant, where there is no other involvement or participation by an offering participant.* On that basis, for example, a newspaper article about an initial public offering that is based on the filed registration statement, on a press release that is filed with or furnished to us, on a filed free writing prospectus or on filed issuer information where the issuer and other offering participants have refused to comment and not otherwise been involved, would not be categorized as an offer under the gun-jumping provisions. (emphasis added)

Notwithstanding requests from many commenters, the Commission declined to exempt rating agency reports from the definitions of "offer" and "free writing prospectus." At footnote 211, the Commission stated:

> We also have not revised the Rule in response to commenters' request for clarification of the treatment of rating agency reports. Our treatment of NRSROs is currently the subject of rulemaking and other considerations.

In footnote 211, the Commission added:

> In addition, as we have said previously, whether information prepared and distributed by third parties that are not offering participants is attributable to an issuer or other offering participant depends upon whether the issuer or other offering participant has involved itself in the preparation of the information or explicitly or implicitly endorsed or approved the information. The courts and we have referred to the first line of inquiry as the entanglement theory and the second as the adoption theory. See the 2000 Electronics Release, note 96 at fn. 48 and accompanying text. We think these theories are equally applicable with respect to issuer or offering participant involvement regarding rating agency reports. For example, if an issuer or underwriter distributes the rating agency report in connection with an offering of the securities, it is appropriate to conclude that such party has adopted that report and should be liable for its contents. Liability under the entanglement theory depends upon the level of pre-publication involvement in the preparation of the information.

In addition, Note 2 to Rule 433(b)(2)(i), which was adopted by the Commission in the Securities Offering Reform Release, provides that:

> A communication for which disclosure would be required under section 17(b) of the Act as a result of consideration given or to be given, directly or indirectly by or on behalf of an issuer or other offering participant is an offer by the issuer or such other offering participant as the case may be ...

Section 17(b) of the Securities Act states:

> It shall be unlawful for any person by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

Since issuers and other offering participants in private offerings pay rating fees to rating agencies in connection with the rating of securities, please confirm in the Proposed Rule (i) that, notwithstanding Note 2 to Rule 433(b)(2)(i) and Section 17(b) of the Securities Act, private issuers may continue to rely on the rating agency's statement in its standard terms and conditions that "we acknowledge that these reports are not issued by or on behalf of you or at your request" and (ii) that rating agency reports are not "offers" by or an behalf of issuers within the meaning of the Securities Act.

Nonpublic Offering Exemption

Section 4(2) of the Securities Act exempts from the registration requirements of the Securities Act "transactions by an issuer not involving a public offering." In *S.E.C. v. Ralston Purina Co.*, 346 U.S. 119, 124, 125 (1953), the Supreme Court opined that this exemption must be interpreted in light of the statutory purpose to "protect investors by promoting full disclosure of information thought necessary to informed investment decisions" and held that "the applicability of section 4(1) should turn on whether the particular class of persons affected need the protection of the Act."[7] The Court quoted the observation of Judge Denman, in *Securities and Exchange Commission v. Sunbeam Gold Mines Co.*, 95 F.2d 699 (C.A. 9th Cir. 1938), that:

[7] The second clause of Section 4(1) is now Section 4(2), as amended August 20, 1964.

....an offering, though not open to everyone who may choose to apply, is none the less 'public' in character for the means used to select the particular individuals to whom the offering is to be made bear no sensible relation to the purposes for which the selection is made...To determine the distinction between 'public' and 'private' in any particular context, it is essential to examine the circumstances under which the distinction is sought to be established and to consider the purposes sought to be achieved by such distinction." 95 F. 2d, at 701."[8]

The Supreme Court further observed that:

... once it is seen that the exemption question turns on the knowledge of the offerees, the issuer's motives, laudable though they may be, fade into irrelevance. The focus of inquiry should be on the need of the offerees for the protections afforded by registration.[9]

In the Final Rule: Nonpublic Offering Exemption (Release No. 33-4552), the Commission issued a statement regarding the availability of the exemption provided by Section 4(2) of the Securities Act. Citing *S.E.C. v. Ralston Purina Co.*, the Commission stated:

...It should be emphasized, therefore, that the number of persons to whom the offering is extended is relevant only to the question whether they have the requisite association with and knowledge of the issuer which make the exemption available.

Consideration must be given not only to the identity of the actual purchasers but also to the offerees. Negotiations or conversations with or general solicitations of an unrestricted and unrelated group of prospective purchasers for the purpose of ascertaining who would be willing to accept an offer of securities is inconsistent with a claim that the transaction does not involve a public offering even though ultimately there may only be a few knowledgeable purchasers.

Similarly, Regulation D under the Securities Act limits the manner of offering in non-public offerings. Rule 502(c) states, in pertinent part, "neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising." The rule makes clear that "general solicitation" or "general advertising" includes, but is not limited to, "any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio."

In its Interpretation regarding the Use of Electronic Media (Release Nos. 33-7856, 34-42728, IC-24426) (the "2000 Release"), the Commission further stated:

Broad use of the Internet for exempt securities offerings under Regulation D is problematic because of the requirement that these offerings not involve a general solicitation or general advertising.

At footnote 79 in the 2000 Release, the Commission indicated that the foregoing discussion would "apply to private offerings conducted in reliance on the exemption from registration contained in Section 4(2) of the Securities Act." The Commission also cited a well-known rule that "a general solicitation is not present when there is a pre-existing substantive relationship between an issuer, its broker dealer, and the offerees." Such a relationship may not exist with respect to persons viewing a rating agency's Internet website, which is available to the general public.

Since rating agencies have continued to publish presale reports and other reports on their Internet websites during private offerings, please confirm that these reports do not constitute (i) a "public offering" within the meaning of Section 4(2) of the Securities Act or Section 3(c)(7) of the Investment Company Act,

[8] 346 U.S. at 123.
[9] 346 U.S. at 126-127.

an "offer" of a security by a form of "general solicitation" or "general advertising" for purposes of Rule 502(c) of Regulation D under the Securities Act or an "offer" of a security within the meaning of Rule 144A under the Securities Act or (ii) an "offer" or "directed selling efforts" in the United States for purposes of Rule 903 of Regulation S under the Securities Act.

As of June 27, 2007 at the latest, the Credit Rating Agency Reform Act of 2006 will become effective. If the Commission is unable to confirm the matters requested in this letter, please either adopt regulations exempting rating agency reports from the terms "public offering" as used in Section 4(2) of the Securities Act and Section 3(c)(7) of the Investment Company Act, the prohibitions against "general solicitations" and "general advertising" in Regulation D under the Securities Act and the prohibition against "directed selling efforts" in the United States in Regulation S under the Securities Act. In the alternative, please put an end to these publications. Investors in highly leveraged, limited recourse, foreign special purpose vehicles should not have to bear the risk that their securities are not exempt from the Securities Act, especially when this risk is typically not disclosed to investors.

This request for clarification is being made because three attempts at up-the-ladder reporting have failed. Thank you for the opportunity to comment on the Proposed Rule.

Very truly yours,

Q

Standard & Poor's Ratings Services U.S. Ratings Fees Disclosure

Back

Publication Date: Jan 16, 2007 00:00 EST

Standard & Poor's Ratings Services ("Ratings Services") receives compensation for engaging in analytic activities that may result in the assignment of a credit rating. Such compensation is normally paid either by the issuers of the securities or third parties participating in marketing the securities. Ratings Services receives this compensation to enable it to perform credible credit analyses. The receipt of this compensation has no influence on an analyst's opinion or other analytic processes.

In all analytic processes, Ratings Services is dedicated to preserving the objectivity, integrity and independence of its ratings. The fact that Ratings Services receives a fee is not a factor in its decision to rate an issuer or in the analysis or rating opinion.

Fee structures and ranges are summarized in fee schedules, which are communicated to the client prior to the issuance of a rating opinion. Precise fee amounts are determined by various factors including, but not limited to, the type of rating being assigned and the principal amount of the debt issuance that is rated. In the case of some issuers, product types or complex and unique structures, Ratings Services reserves the right to assess additional fees for performing additional analytical work. Ratings Services makes every effort to provide ratings services to clients on a timely basis. With unusual timing requests, Ratings Services reserves the right to charge additional fees for this enhanced level of service.

Ratings Services does not receive payments from issuers or other third parties for disseminating ratings including, but not limited to, publishing the ratings and any related analyses or commentaries in Ratings Services' electronic or print subscription services or posting the ratings or any related materials on its website, or providing any analyses to third parties as a part of Ratings Services' marketing activities.

Ratings Services charges subscription and license fees for its publications, software and information products. Ratings Services prepares annual schedules of its subscription and license fees for its publications, software and information products.

Standard & Poor's
US Ratings Fees Disclosure

Corporate (includes industrial and financial service companies):

- Up to 4.25 basis points for most transactions
- Minimum fee $65k

Public Finance:

- Varies based upon the sector, par amount, structure, and complexity of the transaction
- Fees generally range from $2k to $350k
- Fees on some large transactions (>$150million) are determined on a case-by-case basis

Sovereigns:

- Fees typically range from $50k to $200k

Structured Finance:

- Fees range up to 12 basis points

Complex Transactions:

- Higher fees apply to more complex transactions

Frequent Issuer and Multi-Year Fee Arrangements:

- S&P will consider alternative fee arrangements for volume issuers and other entities that want multi-year ratings services agreements. Entities may request information about qualifying for such fee arrangements.

Sector	Credit Market Services Fee Dept
Industrials	800-767-1894
Financial Services	800-275-1584
Public Finance & Sovereigns	877-299-2596
Structured Finance	877-727-8647

Standard & Poor's reserves the right to change its fees. Fee schedules are available to clients upon request.

This U.S. Ratings Services Fees disclosure was last updated on January 16, 2007.

STANDARD
&POOR'S

Standard & Poor's Ratings Services
Terms and Conditions
Applicable To
U.S. Structured Finance Ratings

Scope of Rating. You understand and agree that (i) an issue rating reflects Standard & Poor's current opinion of the likelihood that payments of principal and interest will be made on a timely basis in accordance with the terms of the obligations, (ii) a rating is an opinion and is not a verifiable statement of fact, (iii) ratings are based on information supplied to Standard & Poor's by an issuer or its agents and upon other information obtained by Standard & Poor's from other sources it considers reliable, (iv) Standard & Poor's does not perform an audit in connection with any rating and a rating does not represent an audit by Standard & Poor's, (v) Standard & Poor's relies on the issuer, its accountant, counsel, and other experts for the accuracy and completeness of the information submitted in connection with the rating and surveillance process, (vi) Standard & Poor's undertakes no duty of due diligence or independent verification of any information, (vii) Standard & Poor's does not and cannot guarantee the accuracy, completeness, or timeliness of the information relied on in connection with a rating or the results obtained from the use of such information, (viii) Standard & Poor's may raise, lower, suspend, place on CreditWatch, or withdraw a rating at any time, in Standard & Poor's sole discretion, and (ix) a rating is not a "market" rating nor a recommendation to buy, hold, or sell any financial obligation.

Publication. Standard & Poor's reserves the right to publish, disseminate, or license others to publish or disseminate the rating and the rationale for the rating unless you specifically request that the rating be assigned and maintained on a confidential basis. If a confidential rating subsequently becomes public through disclosure by the issuer or a third party other than Standard & Poor's, Standard & Poor's reserves the right to publish it. As a matter of policy, Standard & Poor's publishes ratings for all public issues and 144A issues in the U.S. market. Standard & Poor's may release analytical reports describing the transaction and explaining the basis of our rating in our sole discretion, and we acknowledge that these reports are not issued by or on behalf of you or at your request. Standard & Poor's may publish explanations of Standard & Poor's ratings criteria from time to time and nothing in this Agreement shall be construed as limiting Standard & Poor's ability to modify or refine Standard & Poor's criteria at any time as Standard & Poor's deems appropriate.

Information to be Provided by You. You shall meet with Standard & Poor's for an analytic review at any reasonable time Standard & Poor's requests. You also agree to provide Standard & Poor's promptly with all information relevant to the rating and surveillance of the rating including information on material changes to information previously supplied to Standard & Poor's. The rating may be affected by Standard & Poor's opinion of the accuracy, completeness, timeliness, and reliability of information received from you or your agents. Standard & Poor's undertakes no duty of due diligence or independent verification of information provided by you or your agents. Standard & Poor's reserves the right to withdraw the rating if you or your agents fails to provide Standard & Poor's with accurate, complete, timely, or reliable information.

Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean information received by Standard & Poor's from you or your agents which has been marked "Proprietary and Confidential" or in respect of which Standard & Poor's has received specific written notice of its proprietary and confidential nature. Notwithstanding the foregoing, information disclosed by you or your agents shall not be deemed to be Confidential Information, and Standard & Poor's shall have no obligation to treat such information as Confidential Information, if such information (i) was substantially known by Standard & Poor's at the time of such disclosure, (ii) was known to the public at the time of such disclosure, (iii) becomes known to the public (other than by Standard & Poor's act) subsequent to such disclosure, (iv) is disclosed lawfully to Standard & Poor's by a third party subsequent to such disclosure, (v) is developed independently by Standard & Poor's without reference to the Confidential Information, (vi) is approved in writing by you for public disclosure, or (vii) is required by law to be disclosed by you or Standard & Poor's, provided that notice of such required disclosure is given to you. Commencing on the date hereof,

Standard & Poor's will use Confidential Information only in connection with the assignment and monitoring of ratings and will not directly disclose any Confidential Information to any third party. Standard & Poor's may also use Confidential Information for research and modeling purposes provided that the Confidential Information is not presented in a way that can be directly tied to you. You agree that the Confidential Information may be used to raise, lower, suspend, withdraw, and place on CreditWatch any rating if the Confidential Information is not directly disclosed.

Standard & Poor's Not an Advisor, Fiduciary, or Expert. You understand and agree that Standard & Poor's is not acting as an investment, financial, or other advisor to you and that you should not and cannot rely upon the rating or any other information provided by Standard & Poor's as investment or financial advice. Nothing in this Agreement is intended to or should be construed as creating a fiduciary relationship between Standard & Poor's and you or between Standard & Poor's and recipients of the rating. You understand and agree that Standard & Poor's has not consented to and will not consent to being named an "expert" under the applicable securities laws, including without limitation, Section 7 of the U.S. Securities Act of 1933.

Limitation on Damages. You agree that Standard & Poor's, its officers, directors, shareholders, and employees shall not be liable to you or any other person for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the rating or the related analytic services provided for in an aggregate amount in excess of the aggregate fees paid to Standard & Poor's for the rating, except for Standard & Poor's gross negligence or willful misconduct. In no event shall Standard & Poor's, its officers, directors, shareholders, or employees be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, legal fees, or losses (including, without limitation, lost profits and opportunity costs). In furtherance and not in limitation of the foregoing, Standard & Poor's will not be liable in respect of any decisions made by you or any other person as a result of the issuance of the rating or the related analytic services provided by Standard & Poor's hereunder or based on anything that appears to be advice or recommendations. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence), or otherwise. You acknowledge and agree that Standard & Poor's does not waive any protections, privileges, or defenses it may have under law, including but not limited to, the First Amendment of the Constitution of the United States of America.

Term. This Agreement shall terminate when the ratings are withdrawn. Notwithstanding the foregoing, the paragraphs above, "Confidential Information", "Standard & Poor's Not an Advisor, Fiduciary, or Expert", and "Limitation on Damages", shall survive the termination of this Agreement or any withdrawal of a rating.

Third Parties. Nothing in this Agreement, or the rating when issued, is intended or should be construed as creating any rights on behalf of any third parties, including, without limitation, any recipient of the rating. No person is intended as a third party beneficiary to this Agreement or to the rating when issued.

Binding Effect. This Agreement shall be binding on, and inure to the benefit of, the parties hereto and their successors and assigns.

Severability. In the event that any term or provision of this Agreement shall be held to be invalid, void, or unenforceable, then the remainder of this Agreement shall not be affected, impaired, or invalidated, and each such term and provision shall be valid and enforceable to the fullest extent permitted by law.

Complete Agreement. This Agreement constitutes the complete agreement between the parties with respect to its subject matter. This Agreement may not be modified except in a writing signed by authorized representatives of both parties.

Governing Law. This Agreement and the rating letter shall be governed by the internal laws of the State of New York. The parties agree that the state and federal courts of New York shall be the exclusive forums for any dispute arising out of this Agreement and the parties hereby consent to the personal jurisdiction of such courts.