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September 5, 2008

Florence Harmon  
Acting Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: RELEASE NOS. IC-28327, IA-2751; FILE NO. S7-19-08  
(REFERENCES TO RATINGS OF NATIONALLY RECOGNIZED STATISTICAL  
RATING ORGANIZATIONS); AND RELEASE NOS. 33-8940, 34-58071;  
FILE NO. S7-18-08 (SECURITY RATINGS)

Dear Ms. Harmon:

We submit this letter in response to the request of the U.S. Securities and Exchange Commission (the “**Commission**”) for comments on proposed amendments to rules under the Investment Company Act of 1940, as amended (the “**1940 Act**”), and proposed amendments to the eligibility requirements relating to offerings of asset-backed securities on Form S-3.<sup>1</sup>

The Commission proposes to amend Rule 3a-7 under the 1940 Act (“**Rule 3a-7**”) to eliminate the exemption from the definition of an investment company for structured financings whose securities are rated in one of the four highest categories by at least one Nationally Recognized Statistical Rating Organization (“**NRSRO**”). The Commission also proposes to amend Form S-3 by replacing the investment grade component in the Form S-3 eligibility requirement for offerings of asset backed securities (“**ABS**”) with a minimum denomination requirement for initial and subsequent sales and a requirement that initial sales of classes of securities be made only to qualified institutional buyers. These proposals are based in part on the assumption that structured financings that rely on the ratings exemption under Rule 3a-7 for their exemption from the definition of an investment company or are offered using Form S-3 are generally not offered to retail investors. However, structured financings backed by insurance company funding agreements or other insurance company fixed income products (“**ICPs**”) are offered to

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<sup>1</sup> Release Nos. IC-28327, IA-2751; File No. S7-19-08 (References to Ratings of Nationally Recognized Statistical Rating Organizations); and Release Nos. No. 33-8940, 34-58071; File No. S7-18-08 (Security Ratings)

the general public and, in cases of such offerings, rely on the exemption proposed to be removed. Most importantly, ICP-backed securities constitute appropriate and useful investments for the general public.

For reasons explained in more detail below, we urge the Commission to modify the proposed amendments to Rule 3a-7 and Form S-3 to preserve the ability of domestic insurance companies to offer to the general public ICP-backed structured securities and to register the offering of this form of structured securities on Form S-3.

1. *Structured Finance Securities Offered by Domestic Insurance Companies are an Appropriate and Useful Form of Investment for Public Investors.*

ICPs are contractual insurance obligations of insurance companies designed to generate periodic cash flows to meet payment obligations under structured securities issued through asset-backed issuers. Insurance companies are able to issue their own debt securities directly to retail investors. Insurance companies are also able to issue ICPs directly to qualified investors. However, ICPs are generally difficult to transfer and have no active secondary market. In addition, investors benefit from the acquisition of ICP-backed securities, because their securities are secured by an asset that should have a higher priority in insolvency than unsecured debt obligations of the insurance company. Therefore, investors may be able to avail themselves of many of the benefits of the ICPs while benefiting from the increased liquidity afforded by ICP-backed securities.

Accordingly, structured securities offered by insurance companies have risk characteristics that the general public can understand and evaluate. In contrast to many other types of structured financings, these securities are backed by the contractual obligation of a single obligor, which is the insurance company. Consequently, they exhibit credit risk characteristics similar to ordinary debt securities of the insurance company but may offer the benefit of a higher priority in an insolvency.

2. *Unlike Foreign Insurance Companies, Domestic Insurance Companies Are Not Eligible to Rely on Rule 3a-5 for Certain Offerings.*

Domestic insurance companies rely in part on Rule 3a-7 under the 1940 Act to sell fixed income structured securities to public investors because, unlike other issuers, including foreign insurance companies, they are not eligible for relief provided by Rule 3a-5, which permits the issuance of fixed income securities through a finance subsidiary. Rule 3a-5 exempts from the definition of an investment company a subsidiary established solely for the purpose of issuing debt and preferred equity securities backed by the guarantee of its parent company. Rule 3a-5, however, requires that the parent company either does not fall within the definition of an investment company under Section 3(a) of the 1940 Act or is excepted or exempted from the definition by a Commission order or by

a rule or regulation issued under Section 3(a) of the 1940 Act. A domestic insurance company, which is exempted from the definition of an investment company under Section 3(c)(3), does not satisfy this requirement. Foreign insurance companies, on the other hand, qualify for relief provided by Rule 3a-5 because, in October 1991, the Commission adopted Rule 3a-6 exempting foreign banks and insurance companies from the definition of an investment company under Section 3(a) of the 1940 Act.<sup>2</sup> Domestic insurance companies, however, must apply to the Commission for an order to receive equivalent relief. In the absence of such an order, provisions of Rule 3a-7 permitting the sale of fixed income securities to public investors are the only practicable means for a domestic insurance company to structure a public offering through a separate finance vehicle.

3. *The Commission Should Modify the Proposed Amendment to Rule 3a-7 to Continue to Permit the Issuance of ICP-backed Securities to the General Public.*

For the reasons stated above, we urge the Commission to modify the proposed amendment to Rule 3a-7 to continue to permit the issuance of ICP-backed securities to the general public by establishing an exception in the rule that would permit the sale to any investor of fixed income securities backed by insurance company obligations, including funding agreements.

The Commission should also take this opportunity to address the disparate treatment of domestic insurance companies and banks under Rule 3a-5. We respectfully submit that there is not a compelling rationale for the Commission requiring domestic insurance companies and banks to apply for relief that their foreign counterparts receive by operation of the rule. A simple solution would be to expand the exemption provided by Rule 3a-6 to apply to domestic banks and insurance companies as well as foreign banks and insurance companies in the context of these kinds of offerings. Rule 3a-6, therefore, would become an alternate exception or exemption for domestic insurance companies that would make them eligible for the relief provided by Rule 3a-5.

4. *In large part for the same reasons stated above, we urge the Commission to modify the proposed amendments to the eligibility requirements for offerings of ABS to continue to permit the registration of ICP-backed securities on Form S-3.*

Structured financings that are backed by insurance company funding agreements or other insurance company fixed income products and offered to the general public

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<sup>2</sup> See Exception from the Definition of Investment Company for Foreign Banks and Foreign Insurance Companies, Investment Company Act Release No. 18381 (October 29, 1991)

constitute appropriate and useful investments for the general public. They have risk characteristics that the general public can understand and evaluate. Unlike many other types of structured financings, structured financings involving ICP-backed securities are secured by the contractual obligation of a single obligor, which is the insurance company. Consequently they exhibit credit risk characteristics similar to ordinary debt securities of the insurance company, but may offer the benefit of a higher priority in an insolvency situation. Eliminating the ability to register ICP-backed securities on Form S-3 could have a detrimental effect on the liquidity of the market for these types of structured financings.

We do not believe that these types of financings can be registered efficiently on Form S-1. Unlike shelf registration statements on Form S-3, from which takedowns can be made rapidly as needed, registration statements on Form S-1 are subject to Commission review and need to be declared effective before they can be used. The potential delays resulting from the use of Form S-1 could have detrimental effects on the market for ICP-backed securities. This market, which is largely one for medium-term notes, requires a prompt response to the demands of potential purchasers for specific maturities, interest rates and currencies. These demands fluctuate rapidly.

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We thank the Commission for the opportunity to submit this comments letter. We would be happy to discuss with you any of the concerns raised above or any other matters that would be helpful in adopting the final rules. Please do not hesitate to contact Vladimir Nicenko ((212) 259-8710), Chris Petito ((202) 346-8783), Oliver Rust ((212) 259-8571), or John Schwolsky ((212) 259-8667) if you would like to discuss these matters further.

Very truly yours,

DEWEY & LEBOEUF LLP

CC: George M. Williams  
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