July 25, 2008

By E-Mail: rule-comments@sec.gov

U. S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549
Attn: Florence E. Harmon, Acting Secretary

Re: Release No. 34-57967 (File No. S7-13-08)

Ladies and Gentlemen:

The American Securitization Forum (the "ASF") submits this letter in response to the request for comments made by the Securities and Exchange Commission (the "Commission") in Release No. 34-57967 (the "Proposing Release"), "Proposed Rules for Nationally Recognized Statistical Rating Organizations". The ASF seeks to promote the efficient growth and development of the securitization markets by engaging in a variety of legal, regulatory, accounting, market practice and educational initiatives. Members of the ASF include investors, issuers, underwriters, servicers, trustees, rating agencies, law firms, accounting firms and other professional participants in the asset-backed securities market.[1] The ASF, therefore, is uniquely positioned to provide the Commission with comprehensive, balanced and practical recommendations reflecting a true consensus among the various market participants, including investors and issuers.

In response to recent events in the global credit markets, there have been numerous proposals for reform with respect to credit rating agencies (the "CRAs") by industry groups, policymakers and the CRAs themselves. Many of these proposals address CRA practices relating to structured finance products.[2] Among others, the President's Working Group on Financial Markets, the

[1] A description of the ASF and its activities is available at its website, http://www.americansecuritization.com.
[2] The term "structured finance product" as stated in the Proposing Release "refers broadly to any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. This broad category of financial instrument includes, but is not limited to, asset-backed securities ("ABS") such as

International Organization of Securities Commissions (IOSCO), the European Council of Finance Ministers (ECOFIN), the Financial Stability Forum and the CRAs have issued proposals and/or requests for comment relating to the role of credit ratings and CRAs in the global financial markets. In addition, on June 25, 2008, the Commission published Proposed Rules for Nationally Recognized Statistical Rating Organizations, Rel. No. 34-57967 (the "SEC Proposed Rules") as part of several related rule amendments relating to CRAs which are nationally recognized statistical rating organizations.

The ASF has assembled a membership task force (the "Task Force") to review the Proposing Release and prepare specific comments to the Proposing Release that address certain of the issues and questions raised in the Proposing Release. This Task Force is comprised of individuals representing the broad constituency of the ASF.

As the Commission observed in the final release of Regulation AB,[3] since the inception of the structured finance industry, the Commission staff has attempted to accommodate the different nature of structured finance products through numerous no-action letters and interpretive positions. In that regard, the Task Force and the ASF would like to offer the comments below on the topics indicated.

Executive Summary

The ASF has considered the potential effects of certain aspects of the SEC Proposed Rules that are of particular interest to the ASF's membership.

The ASF believes that symbology changes to the existing ratings system are inefficient, not helpful to investors, and not consistent with increased quality, accuracy and integrity of credit ratings and the transparency of the ratings process.

The ASF believes that there is a need for greater transparency and disclosure about the extent to which a CRA reviews and verifies information about the pooled assets that underlie a structured finance product, and has made certain proposals herein.

The ASF is concerned about certain aspects of the proposed rules that address information provided to and used by the rating agencies as part of the rating process, and has made proposals to address those concerns.

The ASF fully supports improved disclosure about the meaning of credit ratings. In particular, we support enhancements to disclosure about the use of models to derive ratings for structured finance products, including key assumptions, and limitations of the models. The ASF also favors additional disclosure regarding the meaning of any particular rating category (e.g., "AAA") and the limitations or unaddressed risks inherent in such rating category. We have made a number of proposals herein to address such improved disclosure.

RMBS and to other types of structured debt instruments such as CDOs, including synthetic and hybrid CDOs." The ASF requests that the Commission clarify in the final rules what types of financial products are covered or not covered by this definition.

[3] Release Nos. 33-8518; 34-50905; File No. S7-21-04 (December 22, 2004).

We have also addressed surveillance of outstanding ratings, including the publication by CRAs of early warning indicators, and periodic reviews.

The ASF supports in principle the requirement in the SEC Proposed Rules that CRAs should maintain and publish, in a format that is reasonably accessible to investors, a record of all rating actions (initial ratings, upgrades, downgrades, and placement on watch) for all rated securities for which ratings are published (either because the rated transaction was a public transaction or because private transaction parties agreed to have the rating published).

The ASF has also addressed issues relating to CRA compensation and conflicts of interest, including the Commission's proposal to prohibit analysts from participating in fee negotiations, as well as gifts to rating agencies.

1. Ratings Symbology

The SEC Proposed Rules contain a proposal that CRAs differentiate ratings on structured products from those on other securities either by (a) attaching an identifier to the rating (e.g., "AAA.sf"), or (b) issuing a report that discloses differences between structured products ratings or other ratings. This report would not be specific to the transaction, but would describe on a current basis "the rating methodology used to determine such credit rating and how it differs from the determination of ratings for any other type of obligor or debt security and how the credit risk characteristics associated with a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction differ from those of any other type of obligor or debt security." The ASF supports the issuance of such reports, and believes that such reports could convey meaningful information to investors. We do not, however, support the use of an identifier as an alternative to providing such reports.

The Proposing Release states:

> Because the goal of the rule is to foster greater independent analysis by investors, the Commission preliminarily believes that permitting an NRSRO to comply with the rule by differentiating its structured finance product rating symbols would be an equally effective alternative. The differentiated symbol would alert investors that a structured product was being rated and, therefore, raise the question of how it differs from other types of debt instruments. The Commission is not proposing to require that specific rating symbols be used to distinguish credit ratings for structured finance products. An NRSRO would be permitted to choose the appropriate symbol. The Commission preliminarily believes that methods for identifying credit ratings for structured finance products could include using a different rating symbol altogether, such as a numerical symbol, or appending identifying characters to existing ratings scales, e.g., "AAA.sf" or "AAA$_{SF}$."

The ASF does not support changes to the symbols used by NRSROs to rate structured finance products, the addition of suffixes, or any other changes to the symbology used by the CRAs in rating securities, whether corporate, municipal, sovereign or structured finance.[4]

The ASF believes that a number of measures should be taken to improve the quality, accuracy and integrity of credit ratings for structured finance products, and to enhance disclosure about the meaning of credit ratings and the transparency of the ratings process. However, the ASF does not believe that changes to existing symbology regimes will meaningfully advance the goals of improving the quality, accuracy and integrity of credit ratings for structured finance products and disclosure about the meaning of credit ratings and the transparency of the ratings process.

The ASF notes that investors and other market participants have expressed opposition to ratings symbology changes. A recent Moody's publication[5] indicates that 71% of buy-side respondents in a recent survey opposed similar proposals.

A change in ratings symbols would be more cosmetic than substantive, and would not convey any meaningful additional information about credit ratings. It would not result in any improvements in the structure, credit enhancement or asset quality that might be necessary to support a given rating of a structured finance product.

Moreover, the ASF believes that a required change in ratings symbols would more likely harm than promote the process of restoring investor confidence in structured finance product ratings by labeling structured finance products as being somehow "different" without conveying the basis of any such differences. As a result, the recovery of the structured finance products markets could be impeded by reducing confidence in structured finance product ratings relative to ratings assigned to other instruments. There are also differences by asset class within the structured finance products markets that could be disproportionately impacted by such a change.[6] A symbology change could also require changes in applying private investment guidelines, which contemplate that credit ratings in a given category will have qualitatively similar meanings across ratings sectors (corporate, municipal, sovereign and structured finance) and among different issuers. A scale change would also impose administrative burdens and increased costs on market participants and regulators already grappling with market turmoil and numerous regulatory and legislative proposals in many jurisdictions around the world.

The ASF does not support requiring the addition of an identifier or suffix to indicate that the rated security is a structured finance product. The use of an "identifier" would be a cosmetic change that would not convey any additional information to investors or other participants in the financial markets. Adding an identifier for structured finance products would not address the fundamental concern that ratings in the same category should have a qualitatively similar meaning across ratings sectors. The ASF is also concerned that investors could interpret the

[4] Attached hereto in Appendix A is a letter the ASF previously submitted to the Commission in respect of prior, similar proposals relating to changes in ratings scales or symbols.

[5] Moody's Investors Service, "Rating Methodology: Introducing Assumption Volatility Scores and Loss Sensitivities for Structured Finance Securities", May 2008.

[6] We note in this regard that certain asset classes, such as credit cards and autos, have shown greater ratings stability through the credit crisis than other asset classes, such as RMBS.

existence of a suffix to mean that the credit rating was qualitatively different from a credit perspective from a corresponding rating in a different ratings sector.

2. CRA Review and Verification of Underlying Assets

The ASF believes that there is a need for greater transparency and disclosure about the extent to which a CRA reviews and verifies information about the pooled assets that underlie a structured finance product. Industry participants, including the ASF, have been driving initiatives throughout the industry to address these issues. The ASF recently initiated "Project RESTART", which covers many of these issues, including a detailed standardized format for loan-level data disclosure in residential mortgage-backed securities ("RMBS") transactions.

While CRAs do not themselves diligence the underlying assets, they do obtain and rely on information provided to them in developing a rating. The ASF supports informing investors about what type of information is provided to and relied upon by the CRAs, so that investors may better understand the limits of any review or verification of information on the underlying assets embedded in the credit rating.

Information relating to the underlying assets that is or may be provided to a CRA would vary by asset type, but could include:

1. Generic information about an originator's lending programs, including underwriting guidelines, quality control procedures and asset document forms. This may include the results of onsite visits and meetings.

2. Information provided by the securitization sponsor about its selection criteria for assets to be included in the pool.

3. An "asset tape"[7], or data file / spreadsheet containing numerical data[8] on each asset included in the pool. For an RMBS transaction, the number of fields per loan typically ranges from 60 – 140, including data on the borrower, property, loan terms and underwriting criteria, such as loan-to-value ratio and whether the loans relate to owner-occupied properties.

4. Representations and warranties provided by the securitization sponsor and/or the originator or seller of the assets.

5. An independent accounting firm's agreed-upon procedures (AUP) letter relating to a review of the data in the asset tape. Typically this would involve a random or adverse review of a specified percentage of the assets in the pool, to compare the data contained on the tape with the records of the securitization sponsor (which may include information obtained from the asset originator or seller).

[7] We note that there are certain asset classes and issuers within such asset classes where an asset tape may not be needed by investors or CRAs, and has not typically been prepared, depending on the credit quality of the issuer and/or servicer. The ASF believes that care should be taken not to impose by regulation the production of asset tapes across the board in a "one size fits all" approach for structured securities.

[8] We note that a "data tape" would not include results of any third-party diligence on the underlying assets.

6. A "diligence" report reflecting a qualitative and quantitative review of the pooled assets, which is generally limited to a random or adverse sample of a specified percentage of the assets in the pool. This type of report typically focuses on compliance with laws and regulations (e.g., federal law such as TILA and RESPA, as well as state and federal predatory lending law), as well as compliance with the applicable underwriting criteria. Such a report may be provided by an independent third party diligence company, or may be provided by a division or affiliate of the securitization sponsor or other transaction participant.

7. A "slide show"-style briefing booklet, similar to roadshow materials for a new securities issuance program.

In the past, AUP letters and diligence reports as described above have been obtained and relied on by the underwriter of the securitization, but may not have been requested by the CRAs. The ASF anticipates that in the future, CRAs will routinely require the provision of these items or substantially similar information in connection with initial ratings and will set standards for what level of information such diligence report would contain. We also note that a number of the CRAs have put forth proposals relating to representations and warranties and the provision of diligence reports.

The SEC Proposed Rules would require disclosure of additional information about asset verification. This disclosure would be included in Exhibit 2 to Form NRSRO, which is the form used to apply for registration as a nationally recognized statistical rating organization pursuant to Rule 17g-1 under the Exchange Act, as well as for annual and other updates. The SEC Proposed Rules would add a requirement to disclose "whether and, if so, how information about verification performed on assets underlying or referenced by a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction is relied on in determining credit ratings." The commentary to the proposal indicates that this rule is intended to provide information relevant to the accuracy of credit ratings. Because credit ratings for structured finance products are, in significant part, based on modeling assumptions, which in turn are based on the characteristics of the underlying assets, disclosure about the extent to which these characteristics have been verified would bear on the accuracy of the models.

While the ASF supports this requirement, we note that the disclosure would be a general statement about how (or if) information on the underlying assets is verified as part of the ratings process. We would anticipate that this would be a discussion of policies and procedures generally used for various asset types. While helpful, we believe that this aspect of the SEC Proposed Rules does not go far enough.

The ASF supports a requirement that a CRA be required to publish, in connection with each rating of a structured finance product, disclosure that summarizes all reports and other documents that were provided to the CRA for the purpose of verifying material information about the assets underlying the rated structured finance product. The summary could include for each such report information about the type of report (e.g., diligence report, agreed upon procedures letter), the overall scope of the report (e.g., data verification, compliance with underwriting guidelines, regulatory compliance, fraud scoring), and the provider of the report,

and whether the provider is affiliated with any transaction party. The report could also describe any other information the CRA relied upon in determining the rating.

The ASF believes that disclosure as set forth above would provide meaningful information as to the extent of asset level review actually performed in connection with the rating of a structured finance product. Such disclosure would be more helpful to investors than "boilerplate" disclosure about general policies and procedures. Moreover, as this disclosure would be published simultaneously with the initial issuance of the credit rating, it would reflect the most up-to-date information about the procedures of the CRA rating the structured finance product. The SEC Proposed Rules propose to require disclosure of general information in a Form NRSRO, and we ask the Commission to clarify in the final rules how often such information would be required to be updated.

Finally, the ASF would not support any proposed regime that prohibits the rating of a structured product based on the less than full availability of certain types of information. The ASF believes that in an efficient market, CRAs must be allowed to continue their current practice of making assumptions (which are typically ratings-adverse) if a certain type of information or data is unavailable. To prohibit the rating of a structured product based on lack of specified data fields would be a substantive regulation of the ratings business, and could impede the efficient functioning of the markets. The ASF instead supports a disclosure-based regime, whereby the rating CRA would provide disclosure regarding the limitations of the available information or data, any decisions (e.g., adverse assumptions) made by it to compensate for any missing information or data, and any risks involved with the assumptions and methodologies used by it in providing the rating.

3. Access to Information Provided to CRAs About Underlying Assets

The SEC Proposed Rules would require, for structured finance products, disclosure of all information provided to a CRA by a transaction participant that is used by the CRA to determine the initial credit rating or that is used for surveillance purposes. The stated intent of this requirement is to facilitate unsolicited ratings by CRAs that were not engaged by the transaction participants to rate the structured finance product.

For the reasons set forth below, the ASF does not support this proposal. The goal of the proposal could, rather, be met through an alternative approach, pursuant to which information could be provided to non-engaged CRAs upon request and on a confidential basis.

The ASF believes that the above aspect of the SEC Proposed Rules is problematic for the following reasons:

1. The requirement would apply only to structured finance products, and as such it would place an undue burden on structured finance products as compared to other types of rated securities. We note that in ratings for other types of securities, such as corporate and municipal securities, CRAs use non-public information and may be compensated by the issuer, thus raising the same conflict of interest issues that the above proposal seeks to address.

2. The proposal would require disclosure of information that may be proprietary or confidential. For example, with asset-backed commercial paper, information provided to the CRAs includes confidential and proprietary information about the underlying obligors. As a result, some information of this type is not required to be disclosed to the CRAs (e.g., in the information that an issuer provides to a CRA) and contractual and/or fiduciary duties may prevent its disclosure to the CRAs in any event. Moreover, to the extent that, in order to fulfill a requirement to disclose, all verbal communications would have to be memorialized in writing, the ASF is concerned about a "chilling" effect on verbal communication, which would not improve the flow of information between a CRA and the issuer and other transaction participants (including investors).

3. The proposal would in effect mandate disclosure of information both at the time of an offering and on an ongoing basis that is well in excess of disclosure currently required under the Securities Act and the Exchange Act. For example, in connection with publicly offered asset-backed securities, Regulation AB sets forth a highly detailed, measured disclosure regime, under which specific disclosures are required to be made in the prospectus, specified operative agreements are required to be filed, and enumerated ongoing reporting is required. The proposal, if adopted as proposed, would expand the existing disclosure regime by requiring public disclosure of all information provided to the CRAs. We believe that the existing disclosure and liability regimes under those Acts are sufficient for the protection of investors without layering in the information whose purpose is principally to facilitate the issuance of third party ratings.

4. The proposal would in effect convert a substantial volume of formerly confidential business communications into offering communications, by requiring such communications to be publicly disclosed. As discussed at length in the commentary to the SEC Proposed Rules, all such information provided to a CRA by an issuer, underwriter or other transaction party in connection with the initial rating of a structured finance product would be a "written communication" subject to Securities Act restrictions and liability. In a public ABS offering, all such information would have to comply with either the "free writing prospectus" rules, or the "ABS informational and computational material" rules. Filing and legend requirements would apply to certain of these materials. Most importantly, for all such information, there would be potential liability to the issuer, and in some cases the underwriter, under Section 12(a)(2) of the Securities Act. Moreover, for filed ABS informational and computational materials, there would also be Section 11 liability under the Securities Act. In a non-registered structured finance product offering, the proposal would require the information provided to the CRAs to be placed on a password-restricted website on the pricing date, and made available at that time to investors and other CRAs.[9] All of this information would become offering information that would impose potential Rule 10b-5 liability on the issuer and on sellers in the offering. The net effect would be

[9] To avoid issues relating to a general solicitation, the password restriction would be in place until the offering was complete.

to flood the market with excessive information for which Securities Act liability would not be appropriate; such liability for vast amounts of information would have a chilling effect on communications, which would impede the goals of transparency and quality of information in the ratings process.

5. We believe that this proposal would impose a liability standard on materials that are not prepared for the purpose of being used as offering documents, but rather constitute background information used to evaluate the assets and develop the structure. In particular, the issuer would potentially assume securities law liability for reports prepared by others, such as AUP letters provided by accountants, and diligence reports provided by third party diligence service providers. Securities law liability could also attach to i) documents contained in the documentation file prepared by third parties, if provided to the CRAs, such as loan applications, appraisals, credit reports, and environmental reports, and ii) information provided by other transaction parties, such as financial statements of a servicer or insurer. We believe that the issuer should not be responsible for errors or omissions in these materials, as the issuer did not prepare them; consistent with the Securities Act and the Exchange Act, securities law liability is only appropriate for materials that are prepared by or for the issuer primarily for use as offering communications.

6. If public disclosure of information provided to CRAs is to be required as proposed by the Commission, then we have the following additional comments. The proposal does not, and the final rules should, clearly state for private placements that such public disclosure will not violate any of the private placement safe harbors and exemptions that are available under the Securities Act. To the extent that the final rules contain any requirement for public disclosure of information in a private offering, the rules should specifically provide that such disclosure is not inconsistent with a private placement.

7. The final rules should clarify the interaction of iterative pricing (for example, what information should be required to be disclosed to investors on any particular pricing date where there are multiple pricing dates for different classes in the same offering) on the one hand, with required disclosure under the final rules (should the SEC Proposed Rules be adopted as proposed), on the other.

The SEC Proposed Rules on this point would apply to "all information provided to" the CRA by "the issuer, underwriter, sponsor, depositor, or trustee that is used in determining the initial credit rating … including information about the characteristics of the assets… and the legal structure of the security…" The commentary to the SEC Proposed Rules indicates that as to the underlying assets, the final asset tape would be included within the scope of such information. The commentary indicates that personal identifying information would be excluded. The commentary also indicates that disclosure would not be required for communications that "do not contain information necessary" to determine an initial rating or for surveillance. Notwithstanding the apparent intent that disclosure regarding assets would primarily pertain to the asset tape, we believe that the proposal is overly broad.

The ASF supports a requirement that an asset tape (or other alternative information that may be more relevant to a specific asset class) representing the final composition of the asset pool be required to be made available by the issuer to investors, after removal of any identifying information (in the case of individuals) or other information proprietary to the issuer. We believe that the obligation to provide such information more properly lies with the issuer than with the CRA. The ASF does not believe, however, that all issuers of structured finance products should be required to provide an "asset tape"; certain asset classes, such as MBS, customarily use "loan tapes"; for other asset classes, such as credit cards and auto loans, loan tapes are too granular to be useful and other means of conveying the appropriate data to allow cash flow modeling (e.g. rep lines) may be more appropriate. However, the ASF does not support the broader requirement proposed by the Commission. For example, a plain reading of the proposal as drafted could include within the requirement any reports and other documents (including, for example, closing binders) prepared by third parties (other than the issuer) and not prepared as offering communications. The Commission already has a comprehensive framework of securities disclosure in place, and the rules set forth in the Securities Act and the Exchange Act already provide a public disclosure framework for investors. The ASF is concerned that the Commission's proposals would have the consequence of bringing these materials into the ambit of offering communications under the Securities Act and the Exchange Act, which the ASF does not support for the reasons described above.

Also of concern would be the implication of disclosing information conveyed during onsite visits, meetings, conference calls and other informal communications, to the extent the information was needed to produce the rating. Reducing this type of information to a written record, and then publishing it as an offering communication, would raise further issues with respect to securities law liability and "chilling" effect concerns.

Regardless of the amount or sufficiency of information disclosure, the ASF is concerned about the potential conflicts of interest facing non-solicited CRAs and how such conflicts could lead to reduced transparency and confusion regarding ratings. For example, a natural incentive exists for non-solicited CRAs to position themselves with the market as a desirable "solicited CRA". Whether such market advantage comes in the form of increased investor acceptance or increased issuer acceptance, the inevitable lack of perfect information of the non-solicited CRA, combined with the natural incentives to become a solicited CRA, draws into question whether non-solicited ratings are a meaningful and appropriate element of a CRA regulatory regime.

Given the issues raised by the above proposal, and in light of the stated purpose of the SEC Proposed Rules to facilitate unsolicited ratings, the ASF proposes that any requirement be modified such that a CRA that is engaged to rate a structured finance product would be required to prepare, and provide to any CRA that was not engaged to rate that security, upon request and subject to a confidentiality agreement, specified required information, including the relevant written or graphic information that was provided to the CRA by either the issuer, underwriter, sponsor, depositor, or trustee of that security, that is required by the engaged CRA in determining the initial credit rating or in performing surveillance for the related structured finance product. The required information would not include information conveyed verbally during onsite visits, meetings, conference calls and other informal communications. Each non-engaged CRA requesting the information would be required to sign a confidentiality agreement, agreeing to use the information only for its rating analysis and not to disclose the information to

other parties. The information required to be delivered would not be published, filed with the Commission, or made available to investors. This requirement, and the confidentiality agreement, would not apply to any asset tape or other information that was filed or made publicly available.

The ASF believes that this approach would be consistent with current practice regarding ratings of corporate securities. In this regard, we note that the Adopting Release for Regulation FD[10] states:

> The third exclusion from coverage in Rule 100(b)(2) is for disclosures to an entity whose primary business is the issuance of credit ratings, provided the information is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available. As discussed by commenters, ratings organizations often obtain nonpublic information in the course of their ratings work. We are not aware, however, of any incidents of selective disclosure involving ratings organizations. Ratings organizations, like the media, have a mission of public disclosure; the objective and result of the ratings process is a widely available publication of the rating when it is completed. And under this provision, for the exclusion to apply, the ratings organization must make its credit ratings publicly available. For these reasons, we believe it is appropriate to provide this exclusion from the coverage of Regulation FD.

We believe that the Commission correctly recognized that CRAs receive confidential non-public information in connection with issuing ratings without implicating selective disclosure concerns, and the ASF believes that structured finance products should not be put in any worse position than corporate, municipal or sovereign ratings in this regard. We believe that the conflict of interest concern raised by issuer-paid ratings can be addressed consistently with the approach to disclosure taken in Regulation FD, which does not mandate public disclosure of the inputs into the rating process, by an incremental solution that, in effect, requires making those inputs available to other rating agencies.

We believe that our proposal is a measured response, and one that would not impose any regulatory burden beyond what is required to achieve the stated purpose, which is to facilitate unsolicited ratings. Moreover, the ASF believes that any regulations relating to unsolicited ratings should err on the side of being minimally invasive, for the reason that the goal of facilitating unsolicited ratings is itself problematic. The ASF has significant concerns that unsolicited ratings will not have the benefit of the full review procedures that a CRA would normally undertake if it were engaged to rate the security. The non-engaged CRA would not have the benefit of onsite visits, meetings, conference calls and other informal communications with the issuer and other transaction participants. Moreover, the non-engaged CRA may require specific types of information on the underlying assets (e.g., specific tape fields) that may not have been required by the engaged CRA. As a result, the non-engaged CRA may have to make adverse assumptions in light of not having complete information that it would normally require. This in turn would lead to reduced accuracy in the unsolicited ratings, which would not serve the interests of investors. Investors would also be harmed to the extent that unsolicited ratings of

[10] 17 CFR Parts 240, 243, and 249.

securities that they had purchased were to be published, and such ratings were to be lower than the initial, solicited ratings.

4. Disclosure About the Meaning of Ratings

The ASF fully supports improved disclosure about the meaning of credit ratings. In particular, we support enhancements to disclosure about the use of models to derive ratings for structured finance products, including how the models work, key assumptions, and limitations of the models. The ASF also favors additional disclosure regarding the meaning of any particular rating category (e.g., "AAA") and the limitations or unaddressed risks inherent in such rating category, as well as market initiatives, such as credit ratings handbooks, to assist in educating the public as to the meaning of credit ratings.

The ASF generally supports giving full consideration to all proposals and requests for comment that would lead to the CRAs providing improved disclosure about the meaning of credit ratings while not changing ratings symbology, for example:

1. the provision by the CRAs of information relating to the methodology of determining ratings, and the assumptions that are used in connection with determining ratings, including:

   (a) diligence that is performed by or provided to the CRAs about the underlying assets, and quality control of numerical data provided to the CRAs;

   (b) the characteristics and sensitivities of models used or relied upon by the CRAs in assessing the likely performance of the structured finance product or the underlying assets;

   (c) the extent to which the CRAs rely on representations and warranties made by transaction participants; and

   (d) assumptions as to future events and economic conditions that are embedded in the analytical models used by the CRAs in arriving at a given rating;

2. publishing "what if" scenario analyses, which would address the ratings implications of changes in the underlying assumptions upon which ratings are based, and that would provide insight into ratings tolerance to changing economic or risk circumstances for each major product type;

3. providing, separately from and not as part of the credit rating, information about other characteristics of the structured finance product rating, with full disclosure of the meaning behind that information;

4. providing disclosure indicating that a rating is not immutable, and may change over time; and

5. providing additional information within each ratings sector relating to default probability, loss sensitivity, severity of loss given default, short-tail and long-tail risk and similar metrics generally associated with each rating category, both with respect to historical experience and anticipated performance with respect to newly-issued ratings, and for that information to be provided separately by ratings sector for comparison.

As part of the SEC Proposed Rules, the Commission proposes an additional revision to Exhibit 2 to Form NRSRO, under which disclosure would be required of whether and how assessments of the quality of originators of the underlying assets factor into credit ratings, which the ASF supports in principle. However, since Form NRSRO disclosure is a general description of ratings procedures and is not transaction-specific, we believe that a better approach would be to require the CRAs to include, where appropriate by asset class,[11] with their rating report for each new issuance of a structured finance product, transaction-specific disclosure addressing how any assessments of quality of the applicable originators during the pre-issuance ratings process factored into the initial ratings assigned to such structured finance product upon issuance.[12]

Finally, the SEC Proposed Rules propose that, where a quantitative model is a substantial component of determining a credit rating, the CRA must maintain a specific internal record of the rationale for any material difference between the rating implied by the model and the actual credit rating issued. This information would not be made public, but would be available in connection with examinations by auditors and by the Commission.

The ASF strongly believes that the above approach will do more harm than good to the ratings process. These "outside-of-model" adjustments are merely one component of a rating, and the proposed disclosure would more likely add confusion rather than increase transparency. In any event, the rating agencies are already subject to requirements to make information available to auditors, and the Commission already has regulatory authority in respect of the CRAs; there is simply no need to prescribe the additional generation and publication of this data set in order to achieve the broader goals of the SEC Proposed Rules.

While industry participants are decidedly mixed as to the potential value of CRAs generating and publishing "volatility" or "loss sensitivity" scores for structured finance products, almost all industry participants support increased disclosure relating to volatility and sensitivity of credit ratings. The ASF believes that the disclosure of model sensitivities and how ratings may change depending on changes to assumptions would provide more meaningful information to investors than a score.

5. Surveillance of Outstanding Ratings

Early Warning Indicators

The ASF supports the production by the CRAs of "early warning indicators" for each structured finance product they rate. These reports should consider both economic "outlook" indicators

[11] The ASF supports asset class-specific adjustments and flexibility within the final rules to accommodate differing diligence practices by issuer and asset class.

[12] See section 5 below for commentary about additional proposals in the SEC Proposed Rules relating to use of models in surveillance of ratings.

such as the outlook for the overall industry (e.g., U.S. housing market), as well as early warning outlook indicators relating to the performance of the actual collateral underlying the specific issue. To an extent, the CRAs currently perform similar analyses and generate similar data[13], which could be amalgamated and produced for each issue a CRA rates in a format that is accessible to investors. We also note that the CRAs already regularly publish outlook pieces in the European market.

Periodic Reviews

CRAs currently update previously-issued ratings, but not for every ratings sector, and not for each transaction they have previously rated.[14] The ASF would support a requirement to periodically review previously-issued ratings. In any event, each CRA should disclose to investors its current policy for periodic reviews of a given issue, so that the investor, prior to making its investment decision, can assess whether the issue trades with, e.g., "Periodic Review Included at X months", or whether the rating, once issued, will not be subject to periodic reviews. Simply put, the CRAs should disclose what their surveillance policy is, and what they have surveilled and what they have not. This position would be consistent with the historical disclosure-based approach of the U.S. securities laws. Thus, investors who desire to know that the issue they are considering, whether in the primary or secondary market, is a current opinion based on active surveillance, would have the information as to this point available to them from the CRAs themselves, and market forces could drive the selection of issues that trade with or without the additional periodic updates.

We also note that the SEC Proposed Rules contain a related proposal as part of the proposed revisions to Form NRSRO, under which the following additional topics would be required to be addressed in Exhibit 2 to the form:

> … [h]ow frequently credit ratings are reviewed, whether different models or criteria are used for ratings surveillance than for determining initial ratings, whether changes made to models and criteria for determining initial ratings are applied retroactively to existing ratings, and whether changes made to models and criteria for performing ratings surveillance are incorporated into the models and criteria for determining initial ratings.

The ASF supports the above aspect of the SEC Proposed Rules.

6. Disclosure and Reporting by the CRAs of CRA Activity

The ASF supports in principle the requirement in the SEC Proposed Rules that CRAs should maintain and publish, in a format that is reasonably accessible to investors, a record of all rating actions (initial ratings, upgrades, downgrades, and placement on watch) for all rated securities for which ratings are published (either because the rated transaction was a public transaction or because private transaction parties agreed to have the rating published). The ASF is aware that the proposed format of such reporting (e.g., XBRL) may be costly and time-consuming for the

[13] For example, S&P currently produces "SROC Reports" (synthetic rated overcollateralization) for certain synthetic asset classes in certain markets and globally.
[14] See SEC Proposed Rules, fn. 42-47.

CRAs to implement. Aside from the specific format, the ASF takes the view that if the data is made available to the market in a format not readily usable by investors, service providers will fill the breach, consistent with traditional market forces of supply and demand, to provide investors with analysis of that information in a format digestible by investors according to their desired parameters. The ASF notes that the SEC Proposed Rules propose XBRL as such a format, and leaves to the CRAs themselves to comment on the costs and benefits of such a format.

The ASF also notes that credit ratings may in fact be upgraded (e.g., from "A" to "AA") by the issuing CRA after the initial issuance of the securities, and for certain asset classes and certain issuers, ratings have migrated upward over time. Consistent with the goals of increased investor understanding of the meaning of credit ratings, any disclosure of historical performance should take account of such migration characteristics, to avoid confusion amongst investors as to whether this migration indicated an initially conservative rating by the rating CRA or, rather, a rating that is performing within expected parameters given the asset class and issuer.

7. CRA Compensation and Conflicts of Interest

Fee Negotiations

The SEC Proposed Rules contain a proposal to prohibit analysts from participating in fee negotiations. As such a proposal is consistent with other aspects of U.S. federal securities regulation (e.g., analyst "walls" at securities firms), the ASF would not be opposed to such a rule, were investor feedback in connection with the comment process for the SEC Proposed Rules to indicate substantial investor support for this provision. Alternatively, the CRAs could be required to disclose the fees that were charged to provide the initial rating, together with any deviations from the applicable CRA's standard fee schedule.

Prohibition of Recommendations by CRA Providing a Rating

The SEC Proposed Rules contain a proposal to prohibit CRAs that are NRSROs and their affiliates from providing any recommendation about how to obtain a desired rating, in the course of providing a credit rating for a structured finance product. The ASF is concerned that this proposal could result in over-allocation of regulatory resources to manage normal communications between the CRA and the issuer to a degree not warranted by investor demand. The ASF does not support this aspect of the SEC Proposed Rules, which distinguishes between permitted statements by a CRA about their rating process, including information about procedures and methodologies as well as output from the model and other feedback on a proposed asset pool and structure, and non-permitted recommendations about changes that could be made to achieve a desired rating. The ASF believes that prohibiting CRAs that are NRSROs and their affiliates from providing recommendations as to how to achieve a desired rating could improperly deter routine business communications, and impair the iterative pricing of securities in certain asset classes.[15]

[15] For example, in an RMBS transaction, a CRA may indicate to an issuer that as a general matter there may be no more than 1% of the loans secured by properties in any one zip code to support a AAA rating. If the initial pool does not meet this criterion, under the Commission's proposal, the CRA could advise the issuer that a AAA rating

Gifts

The ASF notes that restriction on gifts to CRAs proposed in the SEC Proposed Rules. The ASF supports such a restriction in principle, and would support a gift regime that was comparable to the standards set forth in the Bank Bribery Act, 18 U.S.C. 215.[16]

Conclusion

The ASF supports many aspects of the SEC Proposed Rules that will contribute to increased transparency and disclosure in the credit ratings process. The ASF is concerned, however, that certain aspects of the SEC Proposed Rules, in particular those relating to ratings symbology changes and required public disclosure of all information provided to CRAs, will, if enacted, cause substantial negative effects on the availability of credit and financing for consumers, investors and other participants in the financial markets. In this regard, the ASF is concerned that adoption of the SEC Proposed Rules relating to public disclosure of information could result in a bifurcation of the financial markets into two segments, one in which only the simplest of securities could be publicly offered, and another in which more highly structured securities could only be offered and sold to the smallest universe of investors, which investors as a small, institutional group already have resources comparable to those of the CRAs themselves to evaluate such products. This effect of driving the structured finance product market into the private placement market would then occur not due to any inability to provide material investment disclosures, but rather due to the impracticability of conversion of all information provided to NRSROs into public disclosures, for the reasons set forth in this comment letter. Rather, a balanced approach, one that furthers the principles of a disclosure-based regime while at the same time avoiding undue constraints on or disincentives to innovation, as set forth in this letter, will address the goals of the Commission's proposal while at the same time not hindering a restoration of investor confidence in the financial markets that will be essential to a recovery from the ongoing credit crisis.

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was not available, but could not advise the issuer to either reduce the concentration of properties in that zip code or provide other compensating enhancements.

[16] § 215. Receipt of commissions or gifts for procuring loans.

(a)Whoever—

(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution;

shall be fined under this title or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, or imprisoned not more than 30 years, or both, but if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed $1,000, shall be fined under this title or imprisoned not more than one year, or both.

. . .

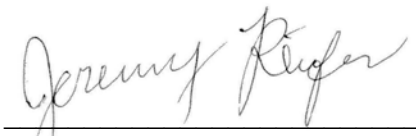
(c) This section shall not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) Federal agencies with responsibility for regulating a financial institution shall jointly establish such guidelines as are appropriate to assist an officer, director, employee, agent, or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public.

The ASF very much appreciates the opportunity to provide the foregoing comments in response to the Commission's Proposing Release. Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact George Miller at (212) 313-1116.

* * *

Sincerely,



Mr. Jeremy Reifsnyder
President, TLD Partners LLC
Co-Chair, ASF Credit Rating Agency Task Force

Mr. Richard Johns
Vice President, Capital One
Co-Chair, ASF Credit Rating Agency Task Force

APPENDIX A

May 21, 2008

Mr. Erik Sirri
Director, Division of Market Regulation
Securities and Exchange Commission
100 F Street Northeast
Washington, DC, 20549-2000

The American Securitization Forum[17] would like to address various proposals and requests for comment relating to changing the credit ratings scales used in rating structured securities[18] (the "Scale Change Proposals"), and to make various recommendations regarding the quality, accuracy and integrity of credit ratings, and ratings disclosure and transparency. The

[17] The American Securitization Forum (ASF) is a broad-based professional forum of more than 370 organizations that are active in the U.S. securitization market. Among other roles, ASF members act as issuers, investors, financial intermediaries and professional advisers in connection with securitization transactions. ASF's mission includes building consensus, pursuing advocacy and providing information and education on behalf of the securitization markets and its participants. This letter was developed principally in consultation with ASF's Credit Rating Agency Task Force (CRA Task Force), with input from other ASF members and committees. The composition of the CRA Task Force reflects the broader membership of ASF, and includes representatives of issuers, investors, financial intermediaries, legal and accounting firms, credit rating agencies and other ASF member organizations. As with other ASF policy recommendations, the positions set forth in this letter reflect a broad consensus among ASF's membership, but do not necessarily reflect the views of each individual ASF member firm. Importantly, and in light of the need for rating agencies to maintain their independence from other market participants, while the recommendations put forward by the ASF take account of the views expressed by the rating agencies, they do not necessarily represent the views of the CRA members. The ASF is aware that various credit rating agencies are working together as an industry to put forward recommendations with respect to independence, quality and transparency of the rating process. ASF is an affiliate of the Securities Industry and Financial Markets Association (SIFMA).

[18] As used in this letter, "structured securities" includes residential mortgage-backed securities, commercial mortgage-backed securities, other types of asset-backed securities, collateralized debt obligations, collateralized loan obligations, and other types of asset-backed financings that are issued through special purpose entities.

360 Madison Avenue, 18th Fl. ▪ New York, NY 10017-7111 ▪ P: 212.313.1111 ▪ F: 212.313.1032
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www.americansecuritization.com

Scale Change Proposals range from adding identifiers or modifiers, to creating an entirely new and separate ratings scale for structured securities.

Introduction

In response to recent events in the global credit markets, there have been numerous proposals for reform with respect to credit rating agencies (the "CRAs") by industry groups, policymakers and the CRAs themselves. Many of these proposals address CRA practices relating to structured securities. Among others, the President's Working Group on Financial Markets, the International Organization of Securities Commissions, the Financial Stability Forum and the CRAs have issued proposals and/or requests for comment relating to the role of credit ratings and CRAs in the global financial markets. In addition, SEC Chairman Cox has recently outlined a set of proposals relating to CRA oversight that the SEC is considering.

ASF has considered these various Scale Change Proposals and their prospective impact on the securitization market. Our views on these matters are set forth below, in a brief Executive Summary which is followed by a more detailed discussion and analysis.

Executive Summary

ASF believes that a number of measures should be taken to improve the quality, accuracy and integrity of credit ratings for structured securities, and to enhance disclosure about the meaning of credit ratings and the transparency of the ratings process. However, we do not believe that the Scale Change Proposals will meaningfully advance those goals.

Investors and other market participants have emphatically rejected the need for, and utility of, the various Scale Change Proposals that have been advanced. We note that a recent Moody's publication (see footnote 5 below and accompanying text) indicates that 71% of buy-side respondents in a recent survey opposed proposals that were comparable to the Scale Change Proposals. These proposals would be cosmetic rather than substantive, and would not convey any meaningful additional information about credit ratings. The Scale Change Proposals would not result in any improvements in the structure, credit enhancement or asset quality that might be necessary to support a given rating of a structured security, would not reduce volatility or the likelihood of ratings changes, and would run counter to the objective that ratings within the same generic ratings category provide a qualitatively similar credit assessment across sectors and among different issuers.

Moreover, ASF believes that the Scale Change Proposals would harm, rather than promote, the process of restoring greater confidence in structured securities ratings by labeling structured securities as being somehow "different", without explaining what those differences are. As a result, market recovery would be impeded by reducing confidence in structured securities ratings relative to ratings assigned to other instruments. Adoption of the Scale Change Proposals would also create significant conflicts within the existing regulatory structure and in applying private investment guidelines, both of which contemplate that credit ratings in a given category will have qualitatively similar meaning across sectors. Finally, these proposals would

impose administrative burdens and increased costs on market participants and regulators, without providing any corresponding benefit.

As an alternative to the Scale Change Proposals, ASF supports giving full consideration to a wide range of substantive proposals that could lead to the CRAs providing meaningful additional information about structured securities credit ratings, thereby enhancing the overall quality and content of such ratings. Among others, these proposals include substantive adjustments to and better disclosure about CRA methodologies, assumptions and diligence; providing more detailed information to investors about the design, characteristics and sensitivity of ratings models; providing comparable historical ratings performance information across market sectors; presenting "what if" scenarios and providing related analysis; refining the techniques employed to estimate and disclose information about default probabilities, loss given default assumptions, tail risk and volatility within sectors; and the provision of "early warning" indicators that may suggest potential ratings changes.

ASF believes that the Scale Change Proposals alone would not convey sufficient additional information to investors, regulators and other market participants to significantly improve the understanding by investors and other market participants of the meaning – and limitations – of credit ratings of structured securities. On the other hand, improved disclosures by the CRAs of some or all of the types described in this letter could significantly improve the understanding of credit ratings.

Arguments for the Scale Change Proposals are Better Addressed by Other Reforms

ASF is aware of rationales that have been advanced in support of a separate ratings scale for structured securities, namely:

- structured securities ratings rely on non-public information to support their ratings;

- structured securities have an inherently greater level of volatility than other types of securities;

- ratings of structured securities are driven primarily by models and assumptions; and

- the process for rating structured securities is "inverted", such that a structure is fitted to a desired rating.[19]

ASF does not agree with these rationales, and does not believe that these rationales support any need for a separate ratings scale for structured securities, for the following reasons:

Firstly, we observe that, as with structured securities, CRAs also use non-public information in the process of rating corporate and municipal securities. In addition, in

[19] See Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience (April 2008) (the "FSF Report").

rating a structured security, much of the information that is available to the CRAs about the structure, the transaction participants and the underlying assets (including loan level data where applicable) is also available to investors. While we acknowledge that a possible weakness of the structured securities ratings process in the past has been some lack of verification of information used in developing a rating, this issue can be addressed better and more directly through reforms of the types that have already been proposed, such as requiring third-party review of certain diligence on the underlying assets.

Secondly, we note that the volatility of structured securities, when viewed over a longer time frame, is comparable to that of other types of securities. The recent volatility in structured securities ratings has been primarily caused by unprecedented macroeconomic trends affecting the credit markets generally, and particularly the U.S. housing market. Much of the recent volatility in structured securities ratings has been concentrated in sectors that are particularly exposed to weaker portions of the U.S. housing market, such as subprime and home equity asset-backed securities, and collateralized debt obligations (CDOs) and structured investment vehicles (SIVs) backed by these types of asset-backed securities. Corporate ratings of companies exposed to this sector have also been affected by market disruption. Ratings volatility resulting from exposure to a particular industry or sector is common to both corporate and structured securities. To the extent that specific types of structured securities have relatively higher ratings volatility, this issue would be best addressed through improved disclosure rather than the adoption of a separate ratings scale.

Thirdly, we note that models and assumptions are also used in corporate and municipal ratings, particularly with respect to projecting future events and financial results. In rating structured securities, elements of modeling that relate to the structure and underlying assets as of the initial rating are based on existing information and data which are for the most part empirically verifiable. While there are elements of modeling that are based on assumptions about future economic conditions (e.g., loss rates), similar models and assumptions are also used, for example, in corporate ratings (e.g., sales growth). The ratings analysis for structured securities is not simply model-driven, but is also qualitative, using information provided to the CRAs by companies and information discussed in ratings committees. While ASF acknowledges the need for more disclosure about assumptions used in modeling, this need would be best addressed through improved disclosure rather than changes in the ratings scale.

Finally, the reference to a structure being fitted to a desired rating does not appear to be a weakness. As structured securities are essentially asset-based financings where the assets are removed from the corporate credit of the transferor, the addition of internal or external credit enhancement is always necessary in order to obtain a rating. The use of guarantees and insurance policies to support a rating is also found in corporate and municipal ratings. Across all sectors, taking substantive actions that are intended to satisfy eligibility criteria for a given rating category should benefit investors, as long as there is full transparency about how such actions affect the outcome of the ratings process.

ASF believes that the above arguments that have been made in favor of creating a separate scale or identifier for structured securities are, in fact, arguments that support improving the quality and quantity of information and increasing transparency, rather than persuasive arguments for a change in labeling.

Creating a Separate Ratings Scale for Structured Securities Will Not Improve the Transparency, Quality, Accuracy and Integrity of Structured Securities Ratings

ASF is opposed to any proposal that would replace the existing ratings scale with a completely new scale for structured securities.[20] ASF believes that such a change would be merely cosmetic, and not substantive.

ASF believes that it is critically important for structured securities to continue to be rated using the traditional ratings scale, based on the categories of: "AAA" (or "Aaa") as having the highest creditworthiness, "AA" (or "Aa") as a second category, "A" as a third category, "BBB" (or "Baa") as a fourth category (which is the lowest category eligible to be considered "investment grade"), and other existing categories that are below investment grade. The ASF position is based on our view that creating a new ratings scale or symbology would impair both the quality and integrity of ratings, in the sense that the clear meaning of the ratings would be degraded since they would no longer be designed to have a consistent meaning across sectors. Market participants should be able to rely on ratings within the same category as having a qualitatively similar credit assessment across sectors as well as among different issuers. For example, a "AAA" rated corporate bond should have a similar credit quality to a "AAA" rated structured security, and a "BBB" rated municipal bond should have a similar credit quality to a "BBB" rated structured security.

Conflict with existing regulatory structure. ASF also notes that the existing rating categories are deeply embedded within the global financial and macroeconomic infrastructure. For example, in the United States, the existing rating categories are referenced in a wide variety of contexts, including federal and state securities laws, legal investment laws and regulations, contractual and charter legal investment limitations, and regulated financial institution laws and regulations. Within the U.S. federal securities laws, the existing rating categories are used to define eligibility for use of a Form S-3 registration statement (which in turn also relates to eligibility for certain uses of free writing prospectuses), qualification as a "mortgage-related security", and eligibility under Rule 3a-7 under the U.S. Investment Company Act. The existing rating categories are also embedded within rules and regulations for determining capital requirements for financial institutions, such as the Basel frameworks as implemented in various jurisdictions, and financial guaranty insurance companies. These rules depend on the concept that a rating in a given category has a qualitatively similar credit meaning across sectors and among various issuers. Moving to a new ratings scale that did not map precisely to the existing scale would require these laws, regulations and contractual provisions to be amended or clarified.

[20] For example, the FSF Report proposes "a separate rating scale or additional rating symbols for structured products." The FSF also acknowledges, however, that the "…introduction of a new, separate rating symbology can also require fundamental changes to investment guidelines and to regulations that reference credit ratings. The introduction of a different rating symbology should therefore be subject to review of its implications for markets and for regulations."

Administrative burdens. Changing the ratings scale also could impose substantial administrative burdens and operational difficulties on financial institutions and financial intermediaries. Record keeping systems based on the existing scale potentially would have to be overhauled. Similar operational difficulties could be imposed on financial institution regulatory agencies, which likely would not have the resources to accommodate the changes without significant taxpayer expense. Investment policies would also need to be overhauled to accommodate the new scale.

Moreover, ASF estimates that there are tens of thousands of separate classes of structured securities currently issued and outstanding which have a public credit rating from one or more CRAs. Changing these ratings to a new ratings scale would be a massive undertaking without any benefit. While such a task could be avoided by grandfathering these classes of existing structured securities under the old ratings scale, such an approach would result in a two-track ratings system that would stay in place for many years.

To the extent that new ratings scale was to be adopted for structured securities, it would require a contemporaneous "translation" methodology, which either would or would not map precisely to the old scale. Even if it did map to the old scale, this translation back could also lead to error and differences in interpretation. The additional time and expense involved in interpreting the new scale's methodology as well as the exercise of translating back the ratings to compare them to ratings of other classes of securities would defeat the purpose of the exercise without offering any material benefit. Further, if the new scale could not be mapped back to the old scale, this mismatch would harm transparency and accountability of ratings insofar as the new ratings would no longer tie back to a generally accepted standard of risk. Structured securities would be in a ratings "black box", segregated from the rest of the market.

Investor feedback. ASF, after consultation with its members, believes that a step as radical as a change in ratings scales is not desired by the very investor community that such a change would presumably be designed to protect. Based on such discussions, investors did not favor a separate ratings scale for structured securities, citing the impediment to market recovery, increased costs, the goal of comparability across product types, and the cosmetic, rather than substantive, nature of such a change. Rather, additional information from the CRAs was cited as the preferred approach to achieving increased transparency and quality of ratings.

Consistent with those discussions, we note that responses to request for comment by one of the major CRAs have indicated that a substantial majority of the surveyed investors were not in favor of the Scale Change Proposals. A recent Moody's publication[21] indicates that 71% of U.S. and Canadian buy-side investor survey respondents opposed the three options outlined in Moody's earlier consultation paper[22] that were comparable to the Scale Change Proposals.

[21] Moody's Investors Service, "Rating Methodology: "Introducing Assumption Volatility Scores and Loss Sensitivities for Structured Finance Securities", May 2008.

[22] Moody's Investors Service, "Special Comment: Should Moody's Consider Differentiating Structured Finance and Corporate Ratings", February 2008. In the Special Comment, Moody's outlined five potential options for the purpose of stimulating widespread debate on the subject of whether and how structured finance ratings should be differentiated from corporate ratings.

We agree with market participants who support better quality and quantity of information, as well as more transparency as to the ratings process and the meaning of ratings, rather than a separate ratings scale. Finally, we believe that investors should be encouraged to understand how structured securities may differ from other securities, in ways that are material to their investment decisions. Investors should not rely on ratings alone in making investment decisions. To the extent that the Scale Change Proposals are cosmetic and do not convey meaningful additional information, they would do nothing to address the problem of over-reliance on ratings taken at face value. Rather, the solution to this problem is improved disclosure and information about the meaning of credit ratings, as discussed further below.

Creating an "Identifier" for Structured Securities Would Not Improve Ratings Quality or Increase Information or Transparency

ASF is opposed to proposals that would change ratings by adding an identifier or suffix to indicate that the security is a structured security. The use of an "identifier" would be a cosmetic change only, and would not, in of itself, provide any meaningful additional information to investors or other participants in the financial markets.

While avoiding many of the operational issues noted in the preceding section, adding an identifier for structured securities would not address the fundamental concern that ratings in the same category should have a qualitatively similar meaning across sectors. If the concern is that a structured security rated in the highest rating category does not have the same credit quality as a corporate bond rated in the highest rating category, designating the structured security as rated, for example, "AAA-sf" instead of "AAA", would not clarify the meaning of the rating or assure investors and other market participants that the structured security was in fact of the highest credit quality. Rather, these approaches would merely obscure the meaning of the rating, by "raising a red flag" without conveying any meaningful information, and presumably would be taken to mean that the rating is somehow different without explaining why. Instead, if this is the concern, then the solution is to take appropriate steps relating to the process by which such ratings are determined, and the inputs that feed into the rating result. Investors and other market participants could interpret the existence of a suffix to mean that the rating was qualitatively different from a credit perspective from a corresponding corporate or municipal rating, which would hinder, rather than further, the desire of investors and other financial market participants to rate to comparable levels of credit quality. Such a result would not add to the quality, integrity or clear meaning of the credit rating, and could impair market recovery by reducing confidence in ratings of structured securities.

This type of ratings identifier is not needed in order to ensure that investors and other market participants understand that any particular security is a structured security. The investor base for structured securities is a sophisticated, primarily institutional one, and those making investment decisions are typically doing so in a professional capacity (including with fiduciary or other duties in connection with such investment decision), either as managers, advisors or senior level employees. Offering materials provided to investors give disclosure as to the nature of the investment, and investors and other participants in the primarily institutional market for structured securities understand the basic difference between, for example, a corporate bond and

a structured bond, without needing a ratings label identifying it as such. We believe it is unlikely that investors generally could have been confused about whether they were buying a structured security. In this regard, we note that one of the beneficial effects of Regulation AB, adopted by the SEC in December 2004, was to upgrade disclosure standards for asset-backed securities in a way that only further clarifies the essential nature of the investment as a structured security, and that these disclosure standards to a significant extent have also been followed for structured securities that are not subject to Regulation AB.

Adding a Volatility Indicator to Ratings of Structured Securities Would Not Improve Ratings Quality or Increase Information or Transparency

ASF is opposed to adding an indicator or suffix to credit ratings that indicates a CRA's view of the volatility, or likelihood of change, of the rating. Any such labeling would be a "quick fix" to the perceived issue, rather than addressing the fundamental issue: transparency and improved access to information.

We would be concerned if this approach were used to indicate greater potential risk of a future negative change in the rating than is currently reflected in the existing system of watchlists for ratings. There should be some baseline level of ratings stability that is embedded in any given rating, in order for a security to qualify for that rating. If and when the security no longer qualifies for that baseline level, then the rating should promptly be put on a watchlist. Prior to that time, however, there should be some expectation that the rating will not change over a reasonable range of future scenarios. If there are additional appropriate steps that should be taken in order to assure a reasonable degree of ratings stability, such as adding additional credit enhancement, a change in other material terms of the structured security, or improved diligence of the assets underlying the structured security, then those steps should be taken. Such steps, if warranted, would improve the quality, accuracy and integrity of the ratings, in a way that merely flagging the rating as being particularly unstable would not. Any remaining volatility risk concerns can and should be addressed through greater disclosure of the basis of the CRAs' assessment of volatility risk, rather than through labeling.

Consideration of Proposals For Improved Disclosure and Information About the Meaning of Structured Securities Ratings

While we support the goal that credit ratings in the same category should have a qualitatively similar meaning across sectors, we appreciate that there are differences in methodology across sectors that are important for investors and other financial markets participants to understand in using credit ratings – differences that cannot be adequately expressed through changes in symbology of ratings. Therefore, we are generally in favor of giving full consideration to all proposals and requests for comment that would lead to the CRAs providing improved disclosure about the meaning of credit ratings while not changing the symbology of the ratings scale, for example:

- the provision by the CRAs of information relating to the methodology of determining ratings, and the assumptions that are used in connection with determining ratings, including:

- diligence that is performed by or provided to the CRAs about the underlying assets, and quality control of numerical data provided to the CRAs;

- the characteristics and sensitivities of models used by the asset originator or the CRAs in assessing the likely performance of the structured securities or the underlying assets;

- the extent to which the CRAs rely on representations and warranties made by transaction participants; and

- assumptions as to future events and economic conditions that are embedded in the analytical models used by the CRAs in arriving at a given rating.

- publishing "what if" scenario analyses, which would address the ratings implications of changes in the underlying assumptions upon which ratings are based, and that would provide insight into ratings tolerance to changing economic or risk circumstances for each major product type;

- providing, separately from and not as part of the credit rating, information about volatility and loss sensitivity in a score or numerical format, with full disclosure of the meaning behind that information;

- the provision by the CRAs of additional information within each sector relating to default probability, severity of loss given default, short-tail and long-tail risk and volatility generally associated with each rating category, both with respect to: 1) historical experience, and 2) anticipated performance with respect to newly issued ratings; and

- an "early warning indicator" to alert investors, prior to the time that further analysis might cause the rating to be placed on negative watch, to the variance of actual experience as to key assumptions from the assumptions used in determining the rating.

Conclusion

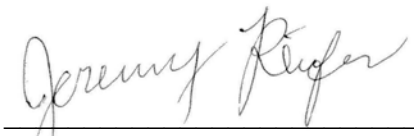
ASF acknowledges that different types of securities, different product types within structured securities, and even different tranches issued by the same structured securities issuer, can perform differently over time. Simply put, any securities, whether corporate or structured, in various industries and product types will perform differently over time under different economic conditions. However, none of these realities is incompatible with maintaining the current ratings scale and comparability across ratings. The arguments in favor of re-labeling structured securities could also apply to other types of securities, and endless differentiation will only serve to detract from, rather than advance, the goals of improving the quality, accuracy and integrity of credit ratings, improving disclosure about the meaning of credit ratings, and increasing transparency relating to the ratings process.

In sum, ASF is in favor of improved disclosure by the CRAs of information and commentary that informs investors as to assumptions, future events or changes in future conditions that may have a bearing on ratings stability, through meaningful disclosure rather than mere re-labeling. This disclosure would support the twin goals of improving disclosure about the meaning of ratings, as well as improving transparency of the rating process. Finally, we note that ASF has been working with, and continues to work with, the CRAs and other market participants on concrete proposals to improve the quality, accuracy and integrity of credit ratings; to improve disclosure about the meaning of credit ratings; as well as to increase transparency relating to the ratings process.

For these reasons, ASF is opposed to the Scale Change Proposals.

ASF appreciates the opportunity to express our views on changes in ratings scales and symbols, and also expects to continue to be involved in the process of responding to proposals and requests for comment relating to the CRAs, and to provide additional comments and recommendations relating to other aspects of the credit ratings process and the CRAs. Should you have any questions or need additional information, please contact one of the undersigned or George Miller, Executive Director of ASF, at 212.313.1116.

Very truly yours,



Mr. Jeremy Reifsnyder
President, TLD Partners LLC
Co-Chair, ASF Credit Rating Agency
Task Force

Mr. Richard Johns
Vice President, Capital One
Co-Chair, ASF Credit Rating Agency
Task Force

Cc: Robert Colby, Deputy Director, Securities and Exchange Commission
Michael Macchiaroli, Associate Director, Securities and Exchange Commission