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April 13, 2007

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Proposed Rules Regarding Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations (Release No. 34-55231; File No. S7-04-07)

Dear Ms. Morris:

Our firm has been retained by Moody's Investors Service ("Moody's") for advice in connection with the proposed rules set forth in the above-captioned release and assisted Moody's in the preparation of its comment letter, dated March 12, 2007, submitted to the Securities and Exchange Commission (the "SEC"). Moody's has requested that we communicate to you directly regarding additional securities laws concerns related to proposed Rule 17g-6(a)(4) as set forth in the release and the comment letters received by the SEC in response to the release.

As Moody's and others have pointed out in their comment letters, proposed Rule 17g-6(a)(4), as drafted, is ambiguous and susceptible to the interpretation that Nationally Recognized Statistical Rating Organizations ("NRSROs") could be compelled to adopt the ratings of current and future NRSROs with respect to a portion of the assets underlying structured securitization transactions. Several of the comment letters sent to the SEC have urged that the SEC clarify the drafting of the proposal to make it clear that NRSROs would indeed be required to adopt other NRSROs' ratings of the underlying securities as their own and to increase the percentage of the underlying assets as to which a NRSRO would be compelled to accept another NRSRO's rating from 15% to 34%.

As Moody's pointed out in its comment letter and as emphasized by other commenters, if NRSROs were required to accept other NRSROs' ratings, this would amount to a de facto regulation of the methodologies and "substance" of ratings, precisely contrary to the express will of Congress under the Credit Rating Agency Reform Act of 2006 (the "Act").

As discussed with Moody's, there are serious securities law issues associated with this interpretation of the proposed rule or any other rule which would compel a NRSRO to accept another NRSRO's ratings of the underlying assets.

The serious concern is that a NRSRO under the proposed rule could be compelled to publish a rating with which it fundamentally disagreed, because it would be required to accept without question another NRSRO's ratings of the underlying assets, even when its own analysis did not support the other NRSRO's conclusions. As Moody's pointed out in its comment letter: "The value that NRSROs provide to the market is based on the quality of their analysis of the fundamental creditworthiness of securities and issuers. It would be a damaging outcome if NRSROs were held accountable for their ratings, but were compelled to issue flawed ratings because they were prevented from applying their own methodologies."

Although rating agencies, unlike issuers, underwriters and broker dealers, are generally not assigned specific responsibilities for disclosures under the federal securities laws, rating agencies, like anybody else, are subject to liability under the broad anti-fraud rules, specifically, Rule 10b-5 under the Securities Exchange Act of 1934, which among other things makes it unlawful "[to] make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading . . . ."

Without getting into the specifics of Rule 10b-5 jurisprudence, it is clear that a rating agency would be liable if it knowingly published a report that falsely misrepresented its own evaluation of a security. The fundamental securities law concern, therefore, with proposed Rule 17g-6(a)(4) is that it could, in practice, lead to such a result.

We appreciate that both the Congress and the SEC have expressed concerns about the structure of the rating agency market, and proposed Rule 17g-

6(a)(4) has been drafted in response to those concerns. The comment letters also indicate that there is much controversy over this issue, and clients of this firm have varying views. Whatever the market structure concerns sought to be addressed by proposed Rule 17g-6(a)(4), a rule which would compel a rating agency to rely on ratings which it considered to be unreliable is at fundamental odds with the basic anti-fraud, honest disclosure predicates of the federal securities laws. In this context, it is important to point out that a rating agency is likely to consider another agency's ratings to be unreliable if those ratings were to be significantly different from the ratings it would have assigned to the same underlying securities, in both the "overrating" or "underrating" cases. If no adjustments to reflect these differences of opinion were permitted, the NRSRO's ratings of the securities issued by the structured finance entity would themselves not reflect the true opinion of the rating agency. The rating agency's rating would, in such a case, be tainted, and publication of such a rating could well lead to liability of the rating agency under Rule 10b-5.

The Rule 10b-5 liability concerns could theoretically be ameliorated if the SEC were to adopt a rule which would in effect exonerate rating agencies from liability associated with reliance on other NRSROs' ratings. Rating agency reports are, among other things, evaluations of the future. When the SEC adopted detailed rules as to how issuers should disclose their exposure to derivatives and other market risks (Item 305 of Regulation S-K), which are also forward-looking in their nature, in response to comments the SEC provided that issuers and a number of other persons would be entitled to "safe harbor" protection for forward-looking statements if they provided the information required by Item 305, notwithstanding the fact that there were numerous other methodologies that could be used to measure exposure to market risk. Consequently, the SEC could conceivably adopt "safe harbor" rules similar to those adopted under Item 305 to protect rating agencies against liability occasioned by reliance on another NRSRO's ratings. The context for the SEC's approach in Item 305 and Proposed Rule 17g-6(a)(4) is, however, very different. In Item 305 the SEC was in essence requiring issuers to adopt a common template for disclosing exposure to market risk, which would then serve as a basis for investors to evaluate such exposure. There could be other templates, but the SEC was satisfied, following the comment process, that the template adopted would provide adequate information in what had become an impossibly complex area.

In the rating agency context, there is, however, no common template or approach for developing rating opinions, and Congress in the Act expressed a distinct preference for more opinions rather than fewer opinions. If Rule 17g(a)(4), however, were adopted in the form being proposed by some commenters, the SEC could in fact be compelling a rating agency to adopt and publish analyses with which it fundamentally disagreed.

Independence, quality and integrity are the raison d'être of the rating agency business. Investors can disagree with a rating agency's opinions, but they expect the ratings them to be arrived at honestly. A rule which would compromise a rating agency's integrity—particularly one which could subject a rating agency to Rule 10b-5 liability would not only be unfair but also would be fundamentally contrary to the basic public policy underlying the federal securities laws.

Very truly yours,

/s/ Robert M. Chilstrom, Esq.