30 Broad Street, 28th Fl
New York, NY 10004-2304
Tel 212 509 1844
Fax 212 509 1895
www.cmbs.org

April 25, 2007

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

Re: File Number S7-04-07
Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations

Dear Ms. Morris:

The Commercial Mortgage Securities Association (CMSA) submits this letter in response to the Securities and Exchange Commission's request for comment on proposed rules implementing provisions of the Credit Rating Agency Reform Act of 2006. CMSA submitted preliminary comments on March 12, 2007, and supplemental comments on March 27, 2007. Because of the complexity of the issues addressed in the proposed rule, and in light of the ongoing debate over subparagraph 17g-6(a)(4), we have undertaken additional analysis of the potential implications of the proposed rule's existing prohibition on notching practices and request consideration of these additional comments.

CMSA is the global trade organization for the commercial real estate capital market finance industry. The organization's primary mission is to promote the ongoing strength, liquidity, and viability of commercial real estate capital market finance worldwide. Based in New York and with a strong presence in Canada, Europe, and Japan, CMSA is the voice for the industry, with a diverse global membership of over 400 member firms represented by more than 5,000 individuals who actively engage in commercial real estate finance activities. CMSA members embody the full spectrum of the industry, including senior executives at the largest banks and investment banks, rating agencies and accounting firms, as well as investors such as insurance companies, pension funds, and money managers, and servicers and data providers to the industry.

We reiterate the concerns expressed in our letters of March 12 and March 27, 2007, regarding rating agency practices and the manner in which subparagraph 17g-6(a)(4) seeks to address unfair, coercive and abusive practices. Specifically, we remain concerned that the current threshold, which allows an NRSRO to refuse to initiate a rating or withdraw an

existing rating if the NRSRO has rated less than 85% of the market value of the assets underlying the structured product, is simply too high and will inhibit, rather than improve, market competitiveness. In light of the Commission's preliminary determination that it is unfair, coercive, or abusive for an NRSRO to threaten or take a negative action with respect to a structured finance product unless a portion of the assets underlying the structured product are also rated by the NRSRO, it is critical that this threshold be modified.

CMSA believes that notching unfairly restricts competition, and therefore, should be prohibited altogether under the final rule. However, should the SEC be inclined to permit certain notching practices, we reiterate the position expressed in our letter of March 27, 2007, where we urged the Commission to adopt a regime that permits the market to decide the appropriate threshold level on a case by case basis. This determination should be made by the NRSRO involved in the transaction and should be set forth in the documents of each structured deal. One way to do this would be to replace the numerical threshold in subparagraph 17g-6(a)(4) with a more flexible "reasonableness" standard that establishes a burden of proof for NRSRO ratings notching. Such a standard would require NRSROs to articulate and document a rational basis for their action when issuing or threatening to issue a lower credit rating, or lowering or threatening to lower an existing credit rating, or refusing to issue a credit rating or withdrawing a credit rating, with respect to securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. Absent a showing of rational business purpose, any ratings notching by an NRSRO would be construed as anticompetitive by design and could, therefore, be prohibited under Section 15E of the Securities Exchange Act of 1934.

To assist the SEC in determining whether a particular notching practice has a legitimate business purpose, the SEC could require NRSROs to draft and follow defined methodologies for notching. Those methodologies should assist the NRSRO in identifying a projected credit support that would explain the need for notching. Criteria could include, for example, defeasance, delinquent and specially-serviced loans, loan-to-value ratio, debt service coverage ratio, occupancy, percent of loans of the commercial mortgage-backed securities ("CMBS") watch list, and other loan performance data. In structured finance deals, this data is available to rating agencies from trustee reports and, is often available to rating agencies when they receive preliminary data on the underlying assets before they are chosen to rate the transaction. In keeping with the goals of the Credit Rating Agency Reform Act, disclosure of such methodologies would enhance the transparency of NRSROs, provide market participants with a better understanding of NRSRO notching decisions and prevent anticompetitive behavior.

There appear to be a number of private sector stakeholders who are interested in establishing a flexible standard such as this, and CMSA supports the approach, depending of course on the specific regulatory language, because it eschews the imposition of an arbitrary numerical threshold in favor of a flexible system that permits an NRSRO's rating decisions to be evaluated against the facts of a particular case and prevailing market realities.

We would be pleased to work with you to develop this approach, including drafting specific language, to the extent that would be helpful. We have submitted these more general comments in the interest of time, recognizing that completion of the final rule may be imminent.

To the extent establishing a "reasonableness" standard is not possible, we remain convinced that the 85% threshold is not feasible and we reiterate the suggestion set forth in our previous letter urging the adoption of a super-majority threshold (66%), a level that provides some flexibility for participants and better promotes new entrants to the market.

Finally, it should be noted that we retain our additional concerns outlined in our letters of March 12 and March 27, 2007, expressing the need for further clarification of the proposed rule, especially with regard to the role of a rating agency in analyzing an asset-backed security where the rating agency has rated less than 85% of the underlying assets and with regard to the proposed definition of "market" value.

Once again, thank you for your consideration of the views of CMSA.

Sincerely,

Dottie Cunningham
Chief Executive Officer

cc: Mike Maciaroli