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March 26, 2009

Ms. Elizabeth M. Murphy, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: *Re-proposed Rules for Nationally Recognized Statistical Rating Organizations*,  
Securities Exchange Act of 1934 Rel. No. 59343 (February 2, 2009)  
File No. S7-04-09

Dear Ms. Murphy:

Standard & Poor's Ratings Services ("Ratings Services"), a nationally recognized statistical rating organization ("NRSRO") registered under Section 15E of the Securities Exchange Act of 1934 (as amended, the "Exchange Act"), welcomes the opportunity to comment on the proposed rule amendments contained in the release referenced above (the "Re-proposing Release").

The Commission has re-proposed, with significant modifications, amendments to rules 17g-2 and 17g-5 under the Exchange Act that were initially proposed on June 16, 2008. (*Proposed Rules for Nationally Recognized Statistical Rating Organizations*, Exchange Act Rel. No. 57967 (June 16, 2008) (the "June 2008 Proposing Release").) In addition, the Commission has proposed a new amendment to rule 100 of Regulation FD. Ratings Services commented on the initial proposals in a letter to the Commission dated July 24, 2008.<sup>1</sup> We are grateful to the Commission for considering our prior comments on the proposed rules. Our comments follow on the re-proposed amendments and the proposed amendment to Regulation FD.

A. Proposed Rules 17g-2(d)(2) and (d)(3)

Proposed rule 17g-2(d)(2) would require an NRSRO to make available on its public website, in XBRL format, the rating action histories for a random sample of 10% of its outstanding issuer-paid credit ratings for each class of ratings for which it is registered and for which it has issued 500 or more outstanding ratings, subject to a six-month lag. Proposed rule 17g-2(d)(3) would require an NRSRO to make available on its public website, in XBRL

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<sup>1</sup> See letter of Vickie A. Tillman, Executive Vice President, Standard & Poor's Ratings Services, to Florence E. Harmon, Acting Secretary, U.S. Securities and Exchange Commission, dated July 24, 2008, available at <http://www.sec.gov/comments/s7-13-08/s71308-23.pdf>

format, the rating action histories for all of its issuer-paid credit ratings for each class of ratings for which it is registered, subject to a 12-month lag. Unlike proposed rule 17g-2(d)(2), proposed rule 17g-2(d)(3) would only apply to ratings initially developed on or after June 26, 2007.

As we noted in our July 2008 letter, we are committed to the principle of transparency of rating actions. Indeed, our public rating actions are always made available on our website for free and in real-time. However, we continue to believe that any requirement to make historical ratings data available for free in XBRL format and without use restrictions would unnecessarily interfere with an NRSRO's ability to capitalize on and protect its intellectual property. Although the 10% limitation in proposed rule 17g-2(d)(2) ameliorates some of the concerns we expressed, we believe that exempting "subscriber-paid," unsolicited and other non-issuer-paid credit ratings from this requirement competitively disadvantages NRSROs that operate principally on the issuer-pays business model. Not only is this fundamentally unfair and unsound, but it is contrary to the prohibition in Exchange Act § 23(a)(2) against adopting any "rule or regulation which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of" the Exchange Act. In addition to unfairly exempting some NRSROs from its reach, proposed rule 17g-2(d)(3) continues to interfere substantially and unnecessarily with the private property rights of NRSROs that operate on the issuer-pays business model. Finally, although we believe that proposed rule 17g-2(d)(3) offers little incremental benefit to investors beyond that provided by proposed rule 17g-2(d)(2), there would seem to be no justification for adopting proposed rule 17g-2(d)(2) if proposed rule 17g-2(d)(3) were to be adopted in its current form.

1. *Any public disclosure requirement, if adopted, should apply equally to all NRSROs regardless of business model.*

The Credit Rating Agency Reform Act of 2006 (the "Reform Act") does not authorize the Commission to discriminate between business models. To the contrary, one of Congress's express purposes in enacting the Reform Act was to eliminate regulatory favoritism for one business model over another. As the accompanying Senate report noted:

*"Most importantly, the Act replaces the artificial barriers to entry created by the current SEC staff approval system with a transparent and voluntary registration system that favors no particular business model, thus encouraging purely statistical models to compete with the qualitative models of the dominant rating agencies and investor subscription-based models to compete with fee-based models." (Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850, Credit Rating Agency Reform Act of 2006, S. Report No. 109-326, 109th Cong., 2d Sess. (Sept. 6, 2006), p. 7 [emphasis supplied].)*

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In addition to the legislative intent that the Commission should not discriminate between business models, there are several other reasons why the Commission should not adopt another final rule that tilts the playing field towards non-issuer-paid ratings.

- (a) *The Commission should not ignore the fact that the subscriber-pays business model leads to selective dissemination of information.*

First, the Commission should pause before creating a regulatory environment in which NRSROs are encouraged to transition to the subscriber-pays business model, characterized in the Re-proposing Release as “NRSROs that issue unsolicited ratings accessible only to subscribers.” (Re-proposing Release, text at n. 17.) Rating agencies utilizing this business model do not – and consistent with the model cannot – make their rating actions available to the public at large for free and in real time. The Commission recognized the importance of broad public dissemination of rating opinions when it stated in connection with rule 17g-4(a)(3) that:

“[A]n NRSRO must have policies designed to ensure that its pending credit rating actions are not selectively disclosed before the credit rating is issued on the Internet or through another readily accessible means. \* \* \* [A]s applicable to the business model of the NRSRO, these policies may include procedures designed to ensure that a credit rating action is issued in a way that makes it readily accessible to the market place, such as posting the credit rating or an announcement of the credit rating action on the NRSRO’s Web site or through a news or information service used by market participants or by making it available to all subscribers simultaneously.” (*Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations*, Exchange Act Rel. No. 55857 (June 5, 2007) (the “June 2007 Adopting Release”), pp. 132-133.)

While we recognize that NRSROs may utilize the business model of their choice, we do not believe the Commission should make special accommodations for NRSROs that issue ratings that are made “accessible only to subscribers.” A rule that treats such NRSROs more favorably than those whose ratings are broadly disseminated to the investing public may well have the side effect of producing more selectively disclosed ratings, furthering the very problem that rule 17g-4(a)(3) was adopted to address. To avoid this unintended effect, proposed rule 17g-2(d)(2), if adopted, should apply to all ratings issued by all NRSROs regardless of business model. (See also the discussion in part C below of the proposed amendment to rule 100 of Regulation FD.)

In addition, the Commission should ensure that if a potential subscriber is willing to pay the same fees and agree to the same terms as other subscribers to services offered by an NRSRO operating on the subscriber-pays business model, then that NRSRO should not be permitted to discriminate among potential subscribers – whether they are investors, academics, information vendors or other credit rating agencies. This would ensure that the

ratings issued by NRSROs operating on the subscriber-pays business model are open to the same degree of scrutiny as ratings issued by NRSROs that make their ratings publicly available, without in any way compromising (indeed, by enhancing) the revenue stream earned by subscriber-pays NRSROs. This is, of course, consistent with the policy goal underlying the disclosures required by the proposed amendments to rule 17g-2(d). As the Commission noted in the Re-proposing Release:

“[T]he proposed amendments would allow market participants to compare credit rating histories for issuer-paid credit ratings on an obligor-by-obligor or instrument-by-instrument basis. Users of credit ratings would be able to compare side-by-side how two or more NRSROs subject to the rule initially rated a particular obligor or security, when the NRSROs took actions to adjust the rating upward or downward, and the degree of those adjustments. Furthermore, users of credit ratings, academics and information vendors could use the raw data to perform analyses comparing how the NRSROs subject to the rule differ in initially determining issuer-paid credit ratings and in their monitoring of these ratings. This could identify an NRSRO that is an outlier because it determines particularly high or low issuer-paid credit ratings or is slow or quick to re-adjust outstanding ratings. It also could help identify which NRSROs subject to the rule tend to be more accurate in their issuer-paid credit ratings. This information also may identify NRSROs subject to the rule whose objectivity may be impaired because of the conflicts of interest surrounding issuer-paid credit ratings.” (Re-proposing Release at p. 14.)

For the same reasons noted by the Commission in the Re-proposing Release, we believe it is important for the Commission to ensure that subscriber-pays NRSROs make their subscriptions available to all subscribers on a non-discriminatory basis. This would ensure that subscriber-pays NRSROs are subject to the same competitive forces as credit rating agencies that make their ratings available to the public. Just as subscriber-pays NRSROs have the ability to educate the markets about the quality of their ratings compared to publicly available issuer-paid ratings, the market should benefit by ensuring that there are as few hurdles as possible confronting academics, information vendors and competitors who may seek to determine which subscriber-pays NRSROs “tend to be more accurate.”

- (b) *The Commission should recognize that subscriber-paid credit ratings are also subject to conflicts of interest.*

Second, the Commission should not lose sight of the conflicts of interest that exist in the subscriber-pays business model. If the issuer of a rated security can benefit economically from a rating that is higher than it should be, then it similarly is the case that any subscriber paying for a rating will have some economic incentive for a rating that either overstates or understates the quality of the securities (e.g., a broker subject to net capital rules or a money market fund subject to investment quality standards could benefit from holding securities whose ratings are overstated, whereas some other investor-subscribers may benefit from

understated ratings in order to obtain securities at a lower purchase price or with a higher yield). If more public disclosure of issuer-pays rating histories will help manage the potential conflicts of interest that exist under the issuer-pays business model, then public disclosure of subscriber-pays rating histories would have the same beneficial effect.

- (c) *Limiting the disclosure requirement to a 10% sample protects revenue streams to the same degree for both issuer-pays and subscriber-pays business models.*

Third, in the absence of evidence to the contrary, there is no reason to suppose that an NRSRO using a subscriber-pays model would be more disadvantaged by proposed rule 17g-2(d)(2) than an NRSRO using an issuer-pays model. Subscriber-pays NRSROs would continue to be able to sell 100% of their current ratings to investors who use them for trading and portfolio monitoring purposes. While it is true that non-subscribers would have access to a 10% random sample of those ratings after six months, there is no reason to conclude that a subscriber would forego access to all of a subscriber-pays NRSRO's current ratings – which are likely used on a daily basis for trading and portfolio monitoring – simply because the subscriber has access to a 10% sample of six-month old ratings. While there may be some loss of revenue associated with the public availability of a 10% random sample of non-current data, there is no reason to conclude that this revenue loss would be any greater for NRSROs operating primarily on the subscriber-pays model compared to those operating primarily on the issuer-pays model.

- (d) *The Commission should retain the non-discriminatory approach it took in the June 2008 Proposing Release.*

Finally, we note that proposed rule 17g-2(d)(2) is in substance identical to the amendment to rule 17g-2(d) adopted by the Commission on February 2, 2009. (*Amendments to Rules for Nationally Recognized Statistical Rating Organizations*, Exchange Act Rel. No. 59342 (February 2, 2009) (the “February 2009 Adopting Release”).) The June 2008 Proposing Release did not solicit comment on whether the proposed amendment to rule 17g-2(d) should discriminate between issuer-paid and subscriber-paid ratings. To the contrary, the Commission explained that the proposed six-month time lag for publicly disclosing rating actions was an “accommodation of subscriber-pay models” that “simultaneously ensur[ed] equal treatment for NRSROs operating under an issuer-pays model.” June 2008 Proposing Release at n. 122. We believe that the Commission's initial approach – taking care not to discriminate among business models – remains the correct approach. Moreover, since the June 2008 Proposing Release did not seek comment on whether NRSROs operating on the issuer-pays model should be subject to more onerous requirements than NRSROs operating on the subscriber-pays model, we question whether the February 2, 2009 adoption of the amendment to rule 17g-2(d) was consistent with the notice-and-comment requirements of the Administrative Procedure Act.

2. *Proposed rules 17g-2(d)(2) and (d)(3) raise many of the same problems contained in the June 2008 proposal.*

The principal differences between proposed rule 17g-2(d)(2) and the amendment to rule 17g-2(d) proposed in June 2008 are (i) the 10% scope limitation and (ii) that the new proposal applies to issuer-paid credit ratings only. The principal differences between proposed rule 17g-2(d)(3) and the June 2008 proposal are (i) the 12-month lag, compared to a six-month lag, between the date of the rating action and the date it is required to be made public in XBRL format, (ii) that the new proposal applies only to rating actions for ratings initially developed on or after June 26, 2007 and (iii) that the new proposal applies to issuer-paid credit ratings only. While the narrowing of scope in proposed rule 17g-2(d)(2) addresses some of the problems with the June 2008 proposal, both proposed rules 17g-2(d)(2) and (d)(3) continue to raise intellectual property and contractual concerns. In addition, lengthening the lag and limiting the universe of rating actions in proposed rule 17g-2(d)(3) do not address the fundamental flaws in the Commission's June 2008 proposal. And as discussed above, both new proposals add a discriminatory element that was not contained in the original proposal.

(a) *Proposed rules 17g-2(d)(2) and (d)(3) continue to unnecessarily interfere with intellectual property and contract rights.*

In proposing rule 17g-2(d)(3), the Commission stated that "to mitigate concerns regarding the loss of revenues NRSROs derive from selling downloads and data feeds to their current outstanding issuer-paid credit ratings, a credit rating action would not need to be disclosed until 12 months after the action is taken." (Re-proposing Release at p. 12.) We do not believe that the rule, as proposed, will enable these NRSROs to preserve the revenues that they derive from selling download access to their current credit ratings. Just like rating action data that is six months old, rating action data that is 12 months old continues to have substantial commercial value, and therefore even with the 12-month delay contemplated by proposed rule 17g-2(d)(3), a requirement to post rating actions in XBRL format for unrestricted use free of charge by market participants and competitors would severely damage Ratings Services' ability to capitalize on and protect its intellectual property.

In addition, third parties may own intellectual property rights in data that would be required to be publicly disseminated by proposed rules 17g-2(d)(2) and (d)(3), and third parties may also have confidentiality and other contract rights that would prevent an NRSRO from publicly disseminating some of the data. We do not believe that anything in the Reform Act authorizes the Commission to effect a taking of private property without compensation by requiring an NRSRO to distribute a proprietary database of rating actions free of charge and without usage restrictions on the recipients of the database, or authorizes the Commission to require that an NRSRO publicly disclose data in violation of existing agreements, at least where the Commission's objectives can be accomplished through more narrowly tailored means as required by Exchange Act § 15E(c)(2).

The Commission originally explained that the intent of the XBRL disclosure requirement is “to tap into the expertise and flexibility of credit market observers and participants to create better and more useful means to compare credit ratings.” (June 2008 Proposing Release at p. 68.) In the Re-proposing Release, the Commission revised this goal to focus on creating better and more useful means “to compare issuer-paid credit ratings.” (Re-proposing Release at p. 13.) While we agree with the Commission’s original formulation of its objective, we continue to believe that it can be achieved without forcing NRSROs and others to give up their right to compensation for their intellectual property. We also believe that the Commission’s objective can be accomplished without improperly discriminating between NRSRO business models. The Commission’s objectives can be achieved by requiring all NRSROs to format their rating actions in XBRL, which credit market observers and participants can then license from NRSROs in line with current market practice. Such a requirement would be far preferable to a requirement that some, but not all, NRSROs relinquish the right to receive compensation for their intellectual property.

- (b) *In any case, the Commission should not expand the disclosure obligation beyond a 10% random sample.*

While for the reasons discussed above we have serious concerns about a 10% random sample XBRL disclosure requirement that would apply to issuer-paid ratings only, we believe this requirement is preferable to the far broader requirement embodied in proposed rule 17g-2(d)(3), and is more consistent with the mandate of Exchange Act § 15E(c)(2) that the rules prescribed by the Commission, as they apply to NRSROs, be “narrowly tailored” to meet the requirements of the Exchange Act. As noted by the Commission in the February 2009 Adopting Release:

“\* \* \* by limiting the ratings actions histories that need to be disclosed to a random selection of 10% of outstanding credit ratings, applying the requirement to issuer-paid credit ratings only, and allowing for a six-month delay before a ratings action is required to be disclosed, the amendment as adopted addresses the concerns among commenters that the rule would cause them to lose revenue.” (February 2009 Adopting Release at p. 10.)

This important accommodation nevertheless enabled the Commission “to accomplish much of what it sought to achieve.” (February 2009 Adopting Release at p. 18.) The Commission went on to say that it:

“\* \* \* expects that making this information more accessible will advance the Commission’s goal of fostering accountability and comparability among NRSROs with respect to their issuer-paid credit ratings. Furthermore, the Commission notes that issuer-paid credit ratings account for over 98% of the outstanding credit ratings issued by NRSROs, according to information furnished by NRSROs in Form NRSRO. Moreover, seven of the ten registered NRSROs currently maintain 500 or more issuer-

paid credit ratings in at least one class of credit ratings for which they are registered. Consequently, applying this rule to issuer-paid ratings should result in a substantial amount of new information for users of credit ratings. It also will allow market observers to begin analyzing the information and developing performance metrics based on it.” (February 2009 Adopting Release at pp. 18-19.)

Given the benefits that the Commission expects from requiring disclosure of a 10% sample of rating histories, through a rule that attempts, at least at some level, to protect the property rights of NRSROs, if the Commission continues to feel that this sort of requirement is necessary, we believe the Commission should allow this new requirement (passed little more than one month ago) to operate and observe whether it succeeds in achieving its intended goals, before imposing a much more burdensome obligation on NRSROs. A 100% disclosure obligation, even one that applies on a one-year lag basis only to ratings initially determined on or after June 26, 2007, would substantially negate the accommodation made in rule 17g-2(d) to address the concerns raised by commenters in response to the June 2008 Proposing Release, and would be contrary to the mandate in Exchange Act § 15E(c)(2) that the Commission’s rules, as they apply to NRSROs, be narrowly tailored to meet the requirements of the Exchange Act.

3. *In any event, the Commission should not adopt duplicative and overlapping requirements.*

If the Commission determines to impose a 100% disclosure obligation as contemplated by proposed rule 17g-2(d)(3), the Commission should withdraw the 10% disclosure obligation in rule 17g-2(d)(2). While the universe of ratings subject to proposed rule 17g-2(d)(2) is larger than that subject to proposed rule 17g-2(d)(3), and proposed rule 17g-2(d)(2) contemplates a six-month lag while proposed rule 17g-2(d)(3) contemplates a one-year lag, both rules would cover all ratings initiated on or after June 26, 2007, and the incremental amount of information that would be made available for a random sample of ratings would hardly seem to justify the additional compliance burden on NRSROs. With access to 100% of the data for ratings issued on or after June 26, 2007, market participants and researchers should have more than enough information to start comparing NRSROs – certainly if the Commission decides to subject all NRSRO ratings to this requirement.

4. *The Commission should clarify how far back in history the XBRL record must go.*

Proposed rule 17g-2(d)(2) applies to the rating action history for outstanding ratings of the NRSRO, whether or not those ratings were initially rated on or after June 26, 2007. For some ratings, particularly those in the categories of financial institutions, brokers, or dealers; insurance companies; corporate issuers; and issuers of government securities, municipal securities, or securities issued by a foreign government, the history of rating actions may go back many years or even decades, well before an NRSRO would have been subject to a



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records retention requirement, and in many cases well before NRSROs began to keep digital archives of ratings histories. We suggest that the Commission clarify that an XBRL record need not be created for a rating action that was produced prior to January 1, 1999 (i.e., approximately 10 years before the adoption of proposed rule 17g-2(d)(2)). This would facilitate the preparation of performance measurement statistics over a period of time comparable to the longest such period required by Form NRSRO (Item 9, Exhibit 1), as revised by the Commission on February 2, 2009, and would not subject NRSROs to undue efforts and the cost and expense of digitizing historical information that is of little or no relevance to current users of credit ratings.

B. Proposed Rules 17g-5(a)(3), (b)(9) and (e)

Proposed rule 17g-5(a)(3) sets forth a procedure for addressing and managing the conflict of interest identified in proposed rule 17g-5(b)(9), which relates to the issuance of arranger-paid ratings for structured finance products. Under proposed rule 17g-5(a)(3), an NRSRO that is hired by an arranger to issue a credit rating for a structured finance product would be required to disclose to other NRSROs the transactions they are in the process of rating. The arranger would also be required to provide the NRSRO preparing the rating with a representation that the arranger will provide information given to that NRSRO to other NRSROs. NRSROs seeking to access this information would need to furnish the Commission an annual certification, in the form set forth in proposed rule 17g-5(e), that they are accessing the information solely to determine credit ratings and will determine a minimum number of credit ratings using the information.

1. *Proposed rule 17g-5(a)(3) should not apply to transactions that are exempt from the registration requirements of the Securities Act of 1933.*

We very much appreciate the Commission's thoughtful revisions to proposed rule 17g-5(a)(3), which address a number of the concerns raised in our July 2008 letter. In particular, we support the Commission's determination to leave the disclosure burden on the arranger, which is of course the party that already bears it. However, we continue to question whether proposed rule 17g-5(a)(3) should apply to transactions that are exempt from the registration requirements of the Securities Act of 1933 (as amended, the "Securities Act"), including transactions in reliance on Regulation S and rule 144A thereunder.

This is of particular concern for transactions involving offshore offers and sales conducted in reliance on Regulation S. In adopting Regulation S, the Commission stated as follows:

"The Regulation adopted today is based on a territorial approach to section 5 of the Securities Act. The registration of securities is intended to protect the U.S. capital markets and investors purchasing in the U.S. market, whether U.S. or foreign nationals. Principles of comity and the reasonable expectations of participants in the

global markets justify reliance on laws applicable in jurisdictions outside the United States to define requirements for transactions effected offshore. The territorial approach recognizes the primacy of the laws in which a market is located. As investors choose their markets, they choose the laws and regulations applicable in such markets.” (*Offshore Offers and Sales*, Securities Act Release No. 6863 (May 2, 1990) [footnotes omitted].)

We believe that the policy judgments made by the Commission in adopting Regulation S continue to be important and relevant, and that the Commission should not abandon these judgments in the context of its NRSRO rulemaking. If NRSROs operating internationally are required to apply U.S.-mandated disclosure obligations to structured finance transactions with no other U.S. nexus, then NRSROs will be placed at a severe competitive disadvantage to rating agencies in foreign countries that are not subject to these requirements. Foreign credit rating agencies will be able to offer their services to arrangers without requiring the arranger to provide information to other credit rating agencies. Hiring the foreign credit rating agency instead of the NRSRO would not only allow the arranger to avoid the expense of maintaining the password-protected website, it would also appeal to any arranger that might want to avoid the issuance of an unsolicited rating and those who wish to maintain in confidence other details about their transactions. Exempting transactions conducted in accordance with Regulation S from proposed rule 17g-5(a)(3) would remove this competitive disadvantage, while requiring the mandated disclosures in connection with transactions sold to the public in the United States.

The Commission should also consider exempting transactions conducted pursuant to other Securities Act registration exemptions, such as rule 144A, from the scope of proposed rule 17g-5(a)(3). The Commission noted in proposing rule 144A that “[t]he Congress and the Commission historically have recognized the ability of professional institutional investors to make investment decisions without the protections mandated by the registration requirement of the Securities Act.” (*Resale of Restricted Securities*, Securities Act Release No. 6806 (November 1, 1998).) We believe analogous considerations apply here, in that professional institutional investors would be able to understand the difference between an investment in a structured finance product that is likely to be rated by multiple NRSROs, and a product that will likely be rated only by an NRSRO hired by the arranger. Indeed, if professional institutional investors perceive a benefit to multiple NRSRO ratings, they can express this to arrangers and demand that arrangers register their offerings under the Securities Act or seek ratings from additional NRSROs.

2. *NRSROs that are not registered in the structured finance product category should disclose that their ratings are not NRSRO ratings.*

We note that an NRSRO would be permitted to access information pursuant to proposed rule 17g-5(a)(3) even if it is not registered pursuant to Exchange Act § 15E(a)(2)(A)(i) to issue ratings with respect to “issuers of asset-backed securities” under

Exchange Act § 3(a)(62)(B)(iv), the category that includes structured finance products. In the event that such an NRSRO accesses rule 17g-5(a)(3) information and issues a credit rating for a structured finance product, we believe it is likely that users of credit ratings may incorrectly assume that such a credit rating is an NRSRO credit rating. Therefore, we suggest that the Commission require that any NRSRO that is not registered as such in the structured finance product category be required to disclose that such rating is not an NRSRO rating each time it issues such a rating.

3. *The hired NRSRO should not be required to alert other NRSROs when new information is posted to the hired NRSRO's website.*

In the Re-proposing Release, the Commission asked whether proposed rule 17g-5(a)(3) should require the hired NRSRO to alert by email all NRSROs that obtain a password to access the hired NRSRO's website when new information is posted to the site. (Re-proposing Release at p. 38.) We do not believe such an obligation should be imposed on the hired NRSRO. Under the procedure proposed by the Commission, it will be quite simple for each interested NRSRO to monitor the websites of hired NRSROs to see whether a transaction has become available that the NRSRO has the capacity and expertise to rate. The Commission should not require the hired NRSRO to send emails to other NRSROs who may have no interest in rating a particular transaction.

4. *The SEC should not specify a "standardized list of information that, at a minimum, should be disclosed."*

In the Re-proposing Release, the Commission asked whether proposed rule 17g-5(a)(3) should provide a standardized list of information that, at a minimum, should be disclosed. (Re-proposing Release at p. 45.) It is difficult to see how the Commission could mandate this consistently with the requirement in Exchange Act § 15E(c)(2) that the Commission may not "regulate the substance of credit ratings or the procedures and methodologies by which any [NRSRO] determines credit ratings," since any Commission-mandated minimum list of information would imply that NRSROs need to consider that information in developing their structured finance product credit ratings. If the Commission believes that more information about structured finance products should be in the market, it would be more appropriate to require this through an amendment to the information disclosure requirements of Regulation AB, rather than through a rule promulgated under Section 15E of the Exchange Act, in order to avoid the implication that NRSROs are required to consider a specific government-mandated data set.

In any case, once arrangers are required to disclose the information they give to a particular hired NRSRO, it will quickly become apparent which NRSROs require less information and which NRSROs require more information, and NRSROs that historically relied on less information to develop their ratings may find it in their interest to begin demanding more information in order to avoid a market perception that their credit ratings are

not based on sufficiently robust data sets. As a result, a rule that requires a minimum amount of data would quickly become superfluous.

C. Proposed Amendment to Rule 100 of Regulation FD

The Commission has proposed to amend Regulation FD in order to create an exception to the general issuer fair-disclosure rule for any information disclosed to an NRSRO, regardless of whether the NRSRO makes its ratings available to the public. Although the Commission indicated that the proposed amendment is related to proposed rule 17g-5(a)(3), the language of the proposed amendment is not limited to NRSROs that access information for the purposes covered by the certification set forth in proposed rule 17g-5(e) or to ratings of structured finance products, and the Re-proposing Release makes clear that the proposed amendment “would accommodate subscriber-based NRSROs that do not make their ratings publicly available for free.” (Re-proposing Release at p. 51.)

The proposed amendment to rule 100 of Regulation FD would undercut the policy justification for including a credit rating agency exception to the general issuer fair-disclosure rule. In adopting the credit rating agency exception, the Commission explained that:

“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.” (*Selective Disclosure and Insider Trading*, Securities Act Release No. 7881 (August 15, 2000) (the “Regulation FD Adopting Release”), text at n. 30 [footnotes omitted].)

As the Regulation FD Adopting Release made clear, the sole rationale for exempting disclosures to credit rating agencies from Regulation FD was the wide public availability of the resulting rating. For this reason we believe the proposed amendment to rule 100 would create an especially dangerous exception to Regulation FD. The Commission should understand that if it adopts the proposed amendment, it will be creating a business model for NRSROs to obtain material non-public information from issuers and then selectively disclose it, or selectively disclose rating actions based upon it, to paying clients only, such as hedge funds. For example, under the amendment as proposed, a corporate issuer would be permitted to disclose material non-public information to an NRSRO (such as information about an

undisclosed business combination transaction, or a likely credit agreement default), and the NRSRO could then use that information as a basis for downgrading the rating assigned to the issuer's securities. The NRSRO would then be free to communicate that downgrade to its paying clients, giving those clients a clear information advantage over other investors who have no knowledge of either the material non-public information, or the downgrade. It is difficult to imagine a rule that would have a more pernicious impact on investor confidence in the fairness of our markets.

Moreover, the proposed exception does not appear to be consistent with Exchange Act § 15E(g), which requires that each NRSRO "maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such [NRSRO], to prevent the misuse in violation of this title, or the rules or regulations hereunder, of material, nonpublic information by such [NRSRO] or any person associated with such [NRSRO]," or rule 17g-4(a)(3), which requires each NRSRO to maintain policies and procedures designed to prevent "[t]he inappropriate dissemination within and outside the [NRSRO] of a pending credit rating action before issuing the credit rating on the Internet or through another readily accessible means." This is because the proposed amendment to rule 100 of Regulation FD would appear to sanction the selective disclosure to investors of rating actions based on material non-public information, and such investors would not be restricted from trading on this information. We believe this would likely constitute "inappropriate dissemination" of material non-public information within the meaning of rule 17g-4, and "misuse" of that information within the meaning of Exchange Act § 15E(g), regardless of the "nature of the business" of an NRSRO, but would appreciate clarification on these points if the Commission adopts the amendment to rule 100 of Regulation FD as proposed.

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March 26, 2009

We at Ratings Services appreciate the opportunity to comment on the proposals and look forward to working with the Commission in moving towards final rulemaking. Please feel free to contact me or Rita Bolger, Senior Vice President and Associate General Counsel, Global Regulatory Affairs, at (212) 438-6602, with any questions regarding our comments.

Sincerely yours,



Vickie A. Tillman  
Executive Vice President  
Standard & Poor's Ratings Services

cc: Hon. Mary L. Schapiro, Chairman  
Hon. Kathleen L. Casey, Commissioner  
Hon. Elisse B. Walter, Commissioner  
Hon. Luis A. Aguilar, Commissioner  
Hon. Troy A. Paredes, Commissioner  
U.S. Securities and Exchange Commission

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