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April 3, 2009

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

Via Electronic Filing – rule-comments@sec.gov

**Re: Re-Proposed Rules for Nationally Recognized Statistical Rating Organizations,
SEC File No. S7-04-09**

Ladies and Gentlemen:

The Commercial Mortgage Securities Association (“CMSA”)¹ appreciates the opportunity to comment on the Securities and Exchange Commission (“SEC”)’s re-proposed rules for nationally recognized statistical rating organizations (“NRSROs”), referenced above and published in 74 Fed. Reg. 6485 (Feb. 9, 2009) (the “Re-Proposed Rules”).²

As you are aware, CMSA is an international trade organization whose members represent a broad cross-section of firms and individuals that are actively engaged in commercial real estate capital market finance activities, including the largest banks and investment banks; insurance companies; investors such as money managers and specialty finance companies; servicers, other service providers to the industry; and the credit rating agencies.³ CMSA and its members are the leaders in setting standards and maintaining a favorable investing environment for the nearly

¹ Extensive information concerning CMSA and the market for CMBS was provided in a letter CMSA filed on July 21, 2008 in response to other SEC proposals regarding NRSRO ratings (“CMSA July 21, 2008 Letter”), which is available at www.sec.gov/comments/s7-13-08/s71308-10.pdf. CMSA will not reprise that background information here, but incorporates its earlier letter by reference herein.

² Re-Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-59343 (File No. S7-04-09), 74 Fed. Reg. 6485 (Feb. 9, 2009).

³ This letter does not reflect the views of CMSA’s credit rating agency members.

\$1 trillion in outstanding commercial mortgage backed securities (“CMBS”) issuance in the United States. In fact, one of the crowning achievements of our association’s efforts has been the development and implementation of a standardized CMSA Investor Reporting Package®, which has brought unparalleled transparency to our market by providing detailed bond, loan and property-level information for all CMBS securitizations. It is with this perspective that CMSA submits the following comments on the Re-Proposed Rules.

Re-Proposed Amendments to SEC Rule 17g-5

As originally proposed, the amendments to SEC Rule 17g-5 would have required the public disclosure of all information provided to an NRSRO retained by an issuer, underwriter, or sponsor (referred to collectively in the proposals as “arrangers”) and used by that NRSRO to issue a rating. In CMSA’s prior comments on this proposal, CMSA expressed no objection to the introduction of a procedure to allow for secondary ratings by non-retained NRSROs, but raised concern that such a public disclosure requirement would leave borrowers with the unappealing choice between publicly disclosing confidential and proprietary information or foregoing the benefits of borrowing through a securitized loan vehicle.⁴ CMSA suggested that any such initiative not require the public disclosure of confidential and proprietary information.

We appreciate the fact that the SEC has taken CMSA’s concerns into account by specifying in the Re-Proposed Rules that public disclosure will not be required.⁵ However, we have concerns about the approach taken in the Re-Proposed Rules, which is to require arrangers to set up password-protected Internet websites to make this information available to non-retained NRSROs.⁶

The Re-Proposed Rule also would impose on arrangers an obligation to make available the information used by NRSROs for rating surveillance.⁷ However, with regard to the Commercial Mortgage-Backed Securities (CMBS) market, mechanisms are already in place to provide the retained NRSRO with initial deal information, ongoing surveillance and supplemental information. Additionally, initial deal information is often shared with several NRSROs before one NRSRO is retained to rate the deal. While we recognize the Re-Proposed rule indicates it is the responsibility of the arranger to ensure this information is provided to non-retained NRSROs, beyond the initial information provided by the arranger to the retained NRSRO (which would also now be distributed to all other NRSROs), as is current practice, the arranger would contract with the trustee and master servicer, at a potential additional cost to the arranger, to have them provide the ongoing and supplemental information via monthly reports and on request. As such, it is important that the trustee and master servicer make available, such monthly surveillance reports or information on request to the non-retained NRSROs. As CMSA noted in its earlier comments,⁸ we believe it is important to reiterate that in the CMBS market, trustees and servicers are the primary providers of information during the surveillance process, and omitting them from the disclosure requirement

⁴ CMSA July 21, 2008 Letter at 12-13.

⁵ Re-Proposed Rules, 74 Fed. Reg. at 6492.

⁶ *Id.* at 6494-95.

⁷ *Id.* at 6496.

⁸ CMSA July 21, 2008 Letter at 12.

would undermine the ability of non-retained NRSROs to engage in surveillance activities as contemplated by the Re-Proposed Rules.

Lastly, we request that the SEC not specify the mechanism by which this information is provided to non-retained NRSROs (i.e. website, email, DVD) and instead enable the arranger, trustee and master servicer to determine which mechanism they will use to provide this information.

Proposed Amendments to SEC Rule 17g-2

The SEC previously amended its Rule 17g-2 to require NRSROs to disclose, in XBRL format on a six month delay, ratings action histories for a randomly selected 10% of “issuer-paid” credit ratings for each rating class for which it has issued 500 or more issuer-paid ratings. Under a proposed amendment to this new requirement, the parameters of this disclosure obligation would be modified to require NRSROs to disclose, on a twelve month delay, ratings history information for 100% of their current issuer-paid ratings that are determined after June 25, 2007.⁹

At the time the ratings history disclosure requirement was first proposed, CMSA did not object to it, although CMSA requested clarification that the new requirement would be in addition to, and not in lieu of, the current posting of rating actions done by NRSROs that serve CMBS markets.¹⁰ The SEC did not respond to CMSA’s clarification request.

As CMSA previously explained, ratings actions are currently available and easily accessible on the NRSROs’ websites for CMBS investors. Accordingly, it remains critical that the implementation of any new rating log requirement not disrupt the access that investors already have to such materials, and CMSA reiterates its request for clarification in this regard.

CMSA appreciates the opportunity to comment on the SEC’s Re-Proposed Rules. If you have any questions regarding our comments, please contact Stacy Stathopoulos at 212-509-1950.

Sincerely,



Dottie Cunningham
Chief Executive Officer
Commercial Mortgage Securities Association

⁹ *Id.* at 6488.

¹⁰ CMSA July 21, 2008 Letter at 14.