



May 3, 2010

VIA E-MAIL

Mr. Randall W. Roy, Esq., Assistant Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Amendments to Exchange Act Rule 17g-5 – ABCP Disclosure

Dear Mr. Roy:

The American Securitization Forum (the “ASF”) submits this letter with respect to paragraphs (a)(3) and (b)(9) of Rule 17g-5 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), part of a series of rule changes recently adopted by the Securities and Exchange Commission (the “Commission”) that impose additional disclosure and conflict of interest requirements on nationally recognized statistical rating organizations (“NRSROs”) and, by extension, additional disclosure requirements on issuers, sponsors, and underwriters (collectively, “arrangers”) of structured finance products (SEC Rel. No. 34-61050 (Nov. 23, 2009) [74 FR 63832 et seq.] (the “Adopting Release”)).

New paragraph (b)(9) of Rule 17g-5 identifies as a conflict “[i]ssuing or maintaining a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument.”

New paragraph (a)(3) of Rule 17g-5 requires an NRSRO that is hired by an arranger to determine an initial credit rating for a structured finance product (1) to disclose to non-hired NRSROs that have furnished the Commission with the certification described in Rule 17g-5(e) that the hired NRSRO is in the process of determining such a credit rating and (2) to obtain representations from the arranger that the arranger will provide information given to the hired NRSRO to the non-hired NRSROs that have furnished the Commission with the certification described in Rule 17g-5(e).

The Commission recognized the serious challenges that market participants would confront in complying with the new requirements of Rule 17g-5 if it were applied retroactively, and so the

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amendments to Rule 17g-5 apply only prospectively, in cases where an NRSRO is hired by an arranger to determine an initial credit rating on or after June 2, 2010. The Commission did, however, publish a companion release soliciting comment on whether the amendments to Rule 17g-5 should be extended to create a mechanism for non-hired NRSROs to determine credit ratings for existing structured finance products; that is, structured finance products issued and initially rated before June 2, 2010 (SEC Rel. No. 34-65051 (Nov. 23, 2009) [74 FR 63866 et seq.]) (the “Companion Release”).

Since the adoption of the amended rule, sponsors and issuers of existing asset-backed commercial paper (“ABCP”) programs¹ have grappled with the question of whether and, if so, how the new requirements would apply to them. Two factors have caused this uncertainty: (i) the references in paragraph (a)(3) of Rule 17g-5 to an “initial” credit rating and (ii) the Commission’s commentary in both the Adopting Release and the Companion Release, to the effect that the amended rule applies only in cases where an NRSRO is hired by an arranger to determine an initial credit rating on or after June 2, 2010, each of which would seem to exclude ABCP programs that were initially rated before June 2, 2010.²

Because of this uncertainty, the ASF, on behalf of participants in the ABCP market, requested a meeting with the Commission staff to discuss the distinctive characteristics of ABCP programs and their associated ratings process and the applicability of the amended rule to ABCP. That meeting took place on April 20, 2010 and was attended by Commission staff from the Division of Trading and Markets and the Division of Corporation Finance and representatives of the ASF and the ABCP issuer community. That meeting was very productive, and we believe that all parties took away a better understanding of the principled reasons for applying the amended rule

¹ For purposes of this letter, references to ABCP programs mean bank-sponsored, multi-seller conduits that (i) were established and credit rated prior to June 2, 2010, (ii) provide financing to bank customers through the continuous issuance of highly-rated, non-extendible commercial paper, which is supported by 100% liquidity and, typically, program-wide credit enhancement, and (iii) are managed by their bank sponsors so the credit ratings that are obtained at the time the program is established are maintained.

² The “arranger” of the ABCP program – typically its sponsor – seeks a rating only at the inception of the program for a structured finance product to be issued on a rolling basis, based on a thorough review of the program documents (including the guidelines for acquiring and financing assets and the credit and liquidity support for the program and its transactions), and thereafter its ongoing interface with the NRSRO involves a review of the conduct of the conduit from time to time to ascertain whether the assets acquired are consistent with the credit quality required, and whether the credit and liquidity support are sufficient, to maintain the assigned rating. The arranger is not, therefore, engaging the NRSRO for initial credit ratings after the program's inception and the nature of the NRSRO's review after the program's inception typically is limited to the conduct of the conduit since the NRSRO's last review.

On a more practical note, in the context of a seasoned ABCP program, the ABCP sponsor has been providing information to the NRSRO over a span of many years, perhaps as many as 15 or more years (again, since the inception of the program), and there is no way to apply the technical requirements of the amended rule because so much of the information provided to the NRSRO over that period of time would not have been tracked or recorded in a manner that would allow for its retrieval and archiving now.

to ABCP programs as well as the serious challenges that arrangers of ABCP programs with extensive histories would face in trying to comply with the new requirements if the rule were applied retroactively.

Following that meeting, ABCP market participants undertook to develop, and have developed, a disclosure regimen that they believe is workable for existing ABCP programs and also advances the goals of the Commission articulated in the Adopting Release. Under this disclosure regimen, in the case of an existing ABCP program initially credit rated before June 2, 2010, an arranger would be deemed to post and maintain on the relevant password-protected web site the information described in paragraphs (a)(3)(iii)(C) and (a)(3)(iii)(D) of Rule 17g-5 if it posts and maintains on such web site the following information:

- (i) Historical Information: On the date that NRSROs are first required to comply with the amendments to Rule 17g-5 in respect of existing ABCP programs initially credit rated before June 2, 2010, as discussed below (such date, the “Compliance Date”) –
 - all ABCP program documentation in its then-effective form, including, but not limited to (as applicable), the conduit organizational documents, the administration agreement, the security agreement, the management agreement, the investment guidelines, the program-wide credit enhancement documentation, the form(s) of liquidity agreement to be entered into in connection with the acquisition of each asset and the opinions delivered in connection with the establishment (or most recent restructuring) of the ABCP program;
 - a copy of the most recent report of all assets then owned by the ABCP conduit, identifying the issuer of each asset, the type of asset and comprehensive data on the performance of each such asset (that is, the same report that each ABCP conduit currently provides to the hired NRSROs on a monthly basis);
 - all offering documents in their then-current forms used in placing the ABCP; and
- (ii) Prospective Information: After the Compliance Date, all information the arranger of the ABCP program provides to the hired NRSRO, or contracts with a third party to provide to the hired NRSROs, for the purpose of undertaking credit rating surveillance of the ABCP, at the same time such information is provided to the hired NRSROs, in accordance with the provisions of Rule 17g-5(a)(3)(iii)(D), as interpreted by the Commission and its staff from time to time.

Sponsors of ABCP programs are striving to comply with a rule, the applicability of which was not clear to them, in order to promote the “public interest by fostering accountability, transparency and competition in the credit rating agency industry.”³ However, these same sponsors are cognizant of the significant difficulties of such compliance for ABCP programs that

³ See Adopting Release at 63832.

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have been in existence and rated for many years (again, in many cases more than 15 years) and have a lengthy record of reporting to their hired NRSROs. Therefore, in the case of historical information, they have developed a practical approach to comply with the amended rule that balances these challenges with the Commission's goals and, in the case of prospective information, they would post and maintain all information provided to the hired NRSROs for the purposes of undertaking credit rating surveillance of the ABCP.

As noted above, since adoption of the amended rule, sponsors and issuers of existing ABCP programs have grappled with the question of whether and, if so, how the amendments to Rule 17g-5 would apply to them. As these sponsors and issuers strive to comply with the amended rule, we respectfully request that the Commission staff extend by [one month] the date by which NRSROs are first required to comply with the amendments to Rule 17g-5 in respect of existing ABCP programs initially credit rated before June 2, 2010. This additional time will afford sponsors of such programs the time necessary to implement appropriate disclosure and other processes to prepare for and comply with the new requirements.

We appreciate the public interest objectives of the Commission and its staff in adopting the amendments to Rule 17g-5 and in seeking to apply the amended rule to ABCP programs. We believe that the information reporting standards outlined above represent an appropriate means of advancing those objectives and that the request for a modest extension of the compliance date will afford sponsors of ABCP conduits the time necessary to comply with those information reporting standards. For these reasons, we respectfully request that the Commission staff issue written interpretive guidance confirming this view and granting this extension request.

The ASF greatly appreciates the opportunity to share with the Commission staff its proposal concerning information disclosure for ABCP programs under Exchange Act Rule 17g-5. Should you have any questions or desire any clarification concerning our views and recommendations, please do not hesitate to contact me via telephone at 212.412.7107 or via email at tdeutsch@americansecuritization.com.

Sincerely,



Tom Deutsch
Executive Director
American Securitization Forum

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