

One State Street Plaza
New York, NY 10004

T 212 908 0500 / 800 75 FITCH
www.fitchratings.com

March 25, 2009

BY ELECTRONIC MAIL

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

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

Dear Ms. Murphy:

Fitch, Inc. (“Fitch”) submits this letter in response to the request for comments of the Securities and Exchange Commission (“SEC” or the “Commission”) on the *Re-proposed Rules for Nationally Recognized Statistical Rating Organizations* (Release No. 34-59343; File No. S7-04-09, the “Re-proposed Rules”). Fitch is a nationally recognized statistical rating organization (“NRSRO”).

Set forth below are our comments on the Re-proposed Rules. Please note that we have only discussed those aspects of the Re-proposed Rules about which we have questions or concerns.

1. Issues Relating to Disclosure Requirements for Rating Actions

| |
|---|
| Relevant Re-proposed Rule: 17g-2 (d)(2) and (3) |
|---|

First, we believe that the Re-proposed Rule effectively balances the need for adequate disclosure of historical information with the legitimate commercial concerns of the NRSROs. Specifically, with respect to subparagraph (d)(3), we welcome the application of the disclosure requirements on a going forward basis (from June 26, 2007), with a twelve-month delay before publication; both of these changes address concerns we had expressed in our previous comment letter to the SEC.

Indeed, we believe that the commercial protections now provided would apply equally well to any NRSRO business model. To that end, we strongly urge the SEC to amend the

requirements of both subparagraphs (d)(2) and (d)(3) to include ratings paid for by subscribers. Users of ratings are predominantly interested in the current ratings, regardless of whether the ratings are subscriber-paid or issuer-paid. We believe that the six-month and twelve-month delays (in subparagraphs (d)(2) and (d)(3), respectively) are sufficient to protect the commercialization of ratings of any type. It is important that users of ratings have access to underlying historical data with which to judge the performance of an NRSRO; that need is not dependent on the business model used by an NRSRO. Furthermore, subscribers (or any other parties) who pay for a rating could also have a vested interest in the rating ultimately issued; to the extent disclosure of historical ratings information is one check on potential conflicts of interest, it is entirely sensible that NRSROs paid by subscribers should provide such disclosure. Finally, it is important that any Rules not distort competition, and that NRSROs, regardless of the business model, operate on a level playing field, in accordance with the same requirements.

The Commission also asks a series of questions with respect to unsolicited ratings. We have in the past, and continue to, issue ratings at our own initiative. We believe that unsolicited ratings are an excellent way for smaller rating agencies to establish a track record and increase competition among rating agencies. For Fitch, the strategic reason for assigning agency-initiated ratings has been to build our coverage and provide a genuine alternative choice for investors in the rating market. Moreover, the SEC would appear to agree with our assessment of the value of unsolicited ratings, in light of Re-proposed Rule 17g-5(a)(3).

We do not believe that any distinction should be made between solicited and unsolicited ratings for purposes of this Re-proposed Rule. Any such distinction would stigmatize unsolicited ratings and undercut their ability to foster competition. Equal treatment is also consistent with our own approach: we apply the same standards to ratings irrespective of commercial or participation status, including those ratings which we establish and maintain on an agency-initiated basis. There is no difference in the relevant rating committee, rating appeal, rating dissemination or rating performance procedures employed by Fitch based on the commercial or participation status of a rating. All of our ratings are assigned and maintained subject to thresholds of available information from all sources. If there is insufficient information to sustain appropriate coverage for an issuer or a transaction, Fitch will not assign ratings, or, if ratings have already been assigned, Fitch will withdraw those ratings. Solicitation status is a purely commercial issue, and is not a proxy for the level or quality of information received from an issuer. Fitch has in the past refused to assign ratings solicited by certain issuers, and has also withdrawn ratings solicited by certain issuers, where our threshold for information was not met. Indeed, the majority of issuers with respect to whom we have issued unsolicited ratings participate in the ratings process and provide information to us. Finally, our own internal studies have shown that the level of unsolicited ratings is comparable to that of solicited ratings – unsolicited ratings are neither consistently lower nor higher than solicited ratings.

For these reasons, in providing the ratings histories required by subparagraphs (d)(2) and (d)(3) of this Re-proposed Rule, we would intend to include unsolicited ratings – such ratings are freely available on our public website, and are included in our default and transition studies. Including such ratings is also operationally much simpler, given that our internal IT systems do not distinguish between solicited and unsolicited ratings.

Finally, from a practical standpoint, we note that NRSROs must be compliant with the provisions of subparagraph (d)(2) that have already been finalized, within 180 days after the Rule's publication in the Federal Register. We note that NRSRO compliance will be dependent on the timely provision by the Commission of the necessary XBRL tags. We urge the Commission to provide these tags as soon as possible, and, should there be a delay, to extend the deadline for compliance.

2. Issues Relating to New Disclosures with respect to Structured Finance Products

| |
|-------------------------------------|
| Relevant Proposed Rule: 17g-5(a)(3) |
|-------------------------------------|

Although we continue to believe that the preferred approach with respect to disclosure would be for the relevant transaction party (issuer, sponsor or underwriter) to disclose publicly for the benefit of investors all information provided by it to any NRSRO, we nonetheless welcome the modifications made to the initial Proposed Rule. It makes imminent sense that a requirement to disclose transaction-related information should reside with issuers, sponsors or underwriters and that all investors should enjoy the benefit of access to all of this information before they make their investment decision. It is within the power of the SEC under the existing securities law to require such disclosure.

While we believe that full public disclosure by issuers, sponsors and underwriters is the best alternative for investors, we believe the approach taken by the SEC in the Re-proposed Rule is a significant improvement over the initial approach. We request, however, clarification with respect to certain provisions in the Re-proposed Rule.

First, the SEC should clarify at what point the obligation for an NRSRO to put a transaction on its internet list arises. In order to have a "bright line" test, we believe the most logical time would be when the NRSRO enters into a written arrangement with the relevant transaction party as to the rating. Indeed, this would be the implication of the requirement, in subparagraph (a)(3)(iii), for the NRSRO to obtain specified representations from the issuer, sponsor or underwriter – we would expect that any such representations would be contained in such a written arrangement.

We appreciate the SEC's clarification that "[o]btaining the representations would provide the NRSRO with a safe harbor if the arranger did not act in accordance with a representation." However, we are concerned that reliance on those representations is based on an undefined standard of "reasonableness". The only guidance provided by the SEC is that it would be unreasonable to rely on representations provided by an issuer/sponsor/underwriter that has breached its representations "a number of times" in the past. Indeed, we think this is the only reason not to rely on such representations. Therefore, we think this should be the clear standard, rather than "reasonableness". In addition, we do not think the NRSROs should have responsibility to enforce compliance by the issuer/sponsor/underwriter with its representations. The SEC is a far more appropriate party and in a superior position to enforce compliance. Also, NRSROs that found problems with disclosure by the issuer/sponsor/underwriter would have no recourse against the issuer/sponsor/underwriter while the SEC would have a full array of enforcement powers.

We think two other aspects of the Re-proposed Rule merit additional clarification. First, disclosure appears to be based on the calendar year. However, that would mean that a transaction mandated at the end of a calendar year would not be on the NRSRO's list for a very long period. We would instead suggest that the list is kept on a rolling 12-month basis, provided that any transaction can be removed sooner if such transaction does not close or the final rating is issued. The requirements with respect to disclosure by the issuer/sponsor/underwriter should be similarly changed. Second, in paragraph (e), we believe the requirement for ratings to be maintained should be qualified by adding the words "in accordance with the NRSRO's established policies and procedures" – this will allow the NRSRO to withdraw a rating if, and when, it deems necessary.

Finally, we think that the Re-proposed Rule should also apply to any rating of a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction that is paid for by a subscriber. In addition, we note that the Re-proposed Rule does not distinguish between public and private transactions. Since it does not make sense to have a private unsolicited rating, we think the Re-proposed Rule should apply only to public transactions.

Thank you for giving us the opportunity to provide our comments. We hope you find them useful, and that you will give them due consideration. Please call me at (212) 908-0626 with any questions that you might have on our comments or if you wish to discuss this matter further at your convenience.

Very truly yours,



Charles D. Brown
General Counsel