

**SEC Credit Rating Agencies Roundtable
April 15, 2009
SEC Headquarters, Washington D.C.**

Panel Two: Competition Issues: What Are Current Barriers to Entering the Credit Rating Agency Industry?

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I. Background on ASF and ASF Interests and Prior Involvement in Credit Rating Agency Oversight and Reform Issues

ASF is a broad-based professional forum through which participants in the U.S. securitization and structured finance business advocate their common interests on important legal, regulatory, legislative and market practice issues. ASF's membership includes over 350 firms, including issuers, investors, financial intermediaries, servicers, trustees, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in the securitization market. ASF also seeks to provide information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar activities. Additional information about ASF, its members and activities is available at www.americansecuritization.com. ASF is an affiliate of the Securities Industry and Financial Markets Association (SIFMA).

Since ASF's inception, and given the central role occupied by credit rating agencies (CRAs) in the securitization markets, ASF has been actively involved in the ongoing policy and market dialogue regarding the role and oversight of CRAs, and potential legislative and regulatory reforms thereto. For example, in August 2006, in connection with Congressional consideration of the Credit Rating Agency Reform Act of 2006 (CRA Reform Act), ASF published a series of "Recommendations Regarding Potential Reforms to Credit Rating Agency Oversight." This was followed in March 2007 by detailed comments in response to the SEC's proposed rules to implement provisions of the CRA Reform Act. In 2008 ASF submitted multiple comment letters in response to further SEC rulemaking proposals, and more recently, last month ASF submitted comments jointly with SIFMA on certain re-proposals of CRA rules originally proposed by the SEC in 2008. All of these comments and submissions are available for review on ASF's website.

In addition to our formal responses to proposed regulation and legislation governing CRA activities and oversight, ASF has conducted extensive member dialogue—including in connection with industry conferences and similar activities—focusing on the role and oversight of CRAs, particularly in light of the ongoing credit and liquidity crisis affecting the securitization and broader debt capital markets. In conducting all of these activities we have sought and benefitted from input and involvement by all segments of ASF's

membership, including securitization issuers, investors, financial intermediaries and CRA members of ASF. We have also sought to coordinate the views of ASF's membership with the views of affiliated financial industry organizations, including SIFMA and the European Securitisation Forum, particularly as relates to international dimensions of CRA oversight and reform initiatives. Finally, although we have attempted to reach and present consensus views of ASF's broad membership on matters affecting CRAs, not all of the views expressed (either in this written statement or in ASF's prior written comments) necessarily reflect the views of every individual ASF member, including but not limited to those CRAs that are ASF members.

II. ASF Views on Issues Affecting CRA Competition and Barriers to Entry

As noted above, CRAs occupy a central role in the securitization markets. Securitization investors and other market participants have historically relied upon CRAs for expert, independent views on the credit performance and credit risks associated with securitization instruments. Threshold requirements for ratings issued by certain CRAs (including but not limited to those designated by the SEC as Nationally Recognized Statistical Ratings Organizations, or NRSROs) continue to be widely used in various bodies of securities and banking regulation, as well as in privately established investment guidelines and contracts. Accordingly, a well-functioning CRA oversight framework is essential to the efficient assessment of risk and allocation of capital throughout the financial markets generally, and within the securitization market in particular.

ASF believes that several key goals and principles are paramount in any CRA regulatory oversight or reform initiatives.

1. **Ratings Accuracy, Integrity and Stability.** The primary goal of CRA regulatory oversight—consistent with the commercial and business goals of securitization market participants—should be to promote the accuracy, integrity and stability of ratings.
2. **Independence.** Actual and potential conflicts of interest between CRAs and third parties—including but not limited to issuers, investors and public sector bodies—should be minimized or eliminated. External influences that may undermine methodological independence or the substantive content of ratings opinions should be avoided.
3. **Competition.** Enhanced competition among CRAs is desirable and should be encouraged. This includes steps to facilitate new entrants into the CRA business, as well as increasing the quality, efficiency and responsiveness of current ratings providers.
4. **Transparency and Disclosure.** Greater transparency and more detailed and meaningful disclosure of CRA ratings methods, processes and outputs should be pursued.

5. **Confidence and Stability.** Restoring confidence and stability to the CRA sector is an essential ingredient to restoring function to the securitization markets.

The objectives outlined above are interdependent (e.g., improvements in transparency and disclosure can help CRAs maintain their actual and perceived independence from undue external influence, and help to restore confidence in CRAs). Moreover, these objectives need to be pursued in a balanced and thoughtful way (e.g., the goal of promoting additional competition among CRAs should not come at the expense of overall accuracy and integrity of ratings).

Within this overarching policy framework, ASF offers the following observations regarding steps specifically designed to promote competition and reduce barriers to entry among CRAs.

Ratings Disclosure and Transparency Enhancements will Facilitate Competition and Choice

ASF believes there is a need for greater transparency and disclosure by CRAs about ratings methods, models and assumptions used to derive ratings for securitized products. We believe that these transparency and disclosure enhancements will facilitate competition by enabling users of ratings to evaluate and compare the relative quality, accuracy and integrity of ratings supplied to the market by different CRAs. Among others, such disclosure and transparency enhancements should include:

- The provision by CRAs of information relating to the methodology of determining ratings, and assumptions used in determining ratings, including a) diligence performed, reviewed and/or relied upon by CRAs relating to the underlying assets and quality assurance reviews of data supplied to CRAs; b) characteristics and sensitivities of models used by asset originators or CRAs in assessing the likely performance of securitized instruments or underlying securities; c) the extent to which CRAs rely upon representations and warranties made by transactions participants and the nature of those representations and warranties; and d) assumptions relating to future events and economic/market conditions that are embedded in analytical models used by CRAs in arriving at a given rating.
- Disclosure by CRAs, in connection with each rating of a securitization product, summarizing all reports and other documents that were provided to the CRA for the purpose of verifying material information about the assets underlying the rated product. Such detailed and transaction-specific disclosure would be more helpful to investors than “boilerplate” disclosure about the CRA’s general policies and procedures.

- Publishing “what if” scenario analyses, addressing the ratings implications of changes in underlying assumptions upon which ratings are based, and that would provide insight into ratings tolerance to changing economic or risk circumstances for each major product type of asset class;
- Providing, separately from the rating itself, information about ratings volatility and loss sensitivity in a score or numerical format, with full disclosure regarding the meaning of that information;
- Provision by CRAs of additional information within each sector relating to default probability, loss severity given default, short-tail and long-tail risk and volatility associated with each rating category with respect to historical and anticipated performance regarding each newly-issued rating; and
- “Early warning indicators” to alert investors and other ratings users, prior to the time that further analysis might cause a rating to be placed on negative watch, to the variance of actual experience in relation to key assumptions employed in determining the rating.

Access to Ratings Information and Unsolicited Ratings

The SEC has advanced proposals (and has recently issued modified proposals) that would require, for securitization products, disclosure of certain information provided to an engaged CRA to non-engaged CRAs. The stated purpose of these proposals is to facilitate unsolicited ratings by non-engaged CRAs, and thereby to promote greater competition and choice among CRAs.

ASF supports the goal of facilitating enhanced competition, and enhanced disclosure and transparency about ratings processes (including more detailed disclosure by CRAs of information utilized and relied upon in making ratings determinations). We are nevertheless concerned that certain formulations of these disclosure and information-sharing proposals could entail costs and burdens that outweigh any presumptive benefit. Moreover, policy proposals designed to facilitate the provision of unsolicited ratings could further destabilize the ratings process and undermine, rather than promote, the goal of ratings accuracy, integrity and stability. In general, unsolicited ratings will not have the benefit of the full review procedures that a CRA would normally undertake if it were engaged to rate a security. Non-engaged CRAs would also not typically have the benefit of onsite visits, meetings and other direct communications with the issuer of the related security or other transaction participants. As a result, non-engaged CRAs may need to make adverse assumptions in lieu of more complete information that an engaged CRA would typically obtain. This could lead to reduced accuracy of unsolicited ratings and further destabilization, to the extent that unsolicited ratings are issued that are lower than initial, unsolicited ratings.

In summary, we acknowledge the strong interest expressed by many investors and certain rating agencies for broad disclosure and equal access to information supplied to engaged CRAs, and that such interest relates to a legitimate desire to promote greater competition and choice among CRAs by facilitating unsolicited ratings. However, we believe there are important, countervailing considerations that dictate a careful and thoughtful policy approach in this area.

Disclosure of Historical Ratings Performance Data

ASF agrees that a regulatory framework that requires disclosure of actual ratings performance over time is a central mechanism for promoting greater CRA competition and transparency, and that can serve as an objective basis for regulatory designation and accountability of CRAs. Facilitating public disclosure, review and meaningful evaluation and comparison of ratings accuracy, quality and stability should support merit-based competition among existing CRAs and, over time, support the entry and acceptance into the market of new CRAs, based upon objective and documented track records. We therefore broadly support the SEC's most recent ratings performance disclosure proposals.

Regulatory Designation of NRSROs

ASF supports the various actions prescribed under the CRA Reform Act, and subsequently implemented via SEC regulations, to streamline and formalize the process by which NRSROs are officially designated. We believe these improvements have established a more certain and objective path for CRAs to obtain this important designation, and have helped to increase the number of CRAs possessing the NRSRO designation in a relatively short period of time since adoption of the CRA Reform Act. In addition to steps taken to date, ASF encourages the SEC to adopt rules requiring it to solicit and consider public and industry comment on pending NRSRO applications from CRAs. Industry participants and professional users of ratings information in particular are well-equipped to evaluate the merits of CRAs and the quality, accuracy and reliability of their ratings methods and opinions.

Conclusion

As noted above ASF supports enhanced competition among CRAs. Ultimately, ASF believes that the most effective policy responses to achieve this goal—while balancing other important policy objectives relating to CRA oversight—is to take steps that provide investors and other consumers of ratings information with better information that they may use to evaluate and distinguish among ratings providers, based upon the demonstrated quality, accuracy and stability of the ratings they provide. We believe that these steps will, over time, help to reduce or eliminate barriers to entry, promote new entrants into the CRA business, and stimulate market-based competition in a manner that serves the public and private sector interest in ratings accuracy and integrity.