Realpoint

February 4, 2011

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

File No.: 4-622

Re: **Realpoint[1] Response to Request for Comment[2] under Section 939(h)[3]**

Dear Ms. Murphy:

Summary

Realpoint believes that numerous adverse consequences would arise from the Commission requiring standardization of Rating Procedures,[4] serving as the single-source provider of Rating Procedures or undertaking the role of a credit rating agency ("CRA"). For example, the Commission would thereby:

- force CRAs to determine ratings based on the Commission's Rating Procedures or, as is more likely, given potential liability concerns, render CRAs unwilling to determine ratings based on the Commission's Rating Procedures if and when they disagreed therewith unless there was an exemption, or other form of protection from liability, for ratings issued in accordance with the Commission's Rating Procedures;

- prohibit CRAs from developing other Rating Procedures - even if those other Rating Procedures were more accurate, more up-to-date or more creative than those of the Commission;

- prohibit CRAs' ability or authority, or reduce incentive for CRAs, to undertake and invest in the qualitative, or subjective, aspects of their Rating Procedures, such as reviews by experienced analysts of qualitative factors derived from the review of specific underlying properties and loans and reviews by experienced attorneys of ABS transaction documents and underlying loan and other legal documents, to identify qualitative risks and, when warranted, make quantitative adjustments to the property or loan level analysis or model metrics to address the identified risks and thereby increase the accuracy of ratings;

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[1] Realpoint LLC, Morningstar company ("Realpoint"), is a Nationally Recognized Statistical Ratings Organization ("NRSRO"), and presently primarily specializes in commercial mortgage-backed securities ("CMBS") securities ratings, research, surveillance services, and data. Realpoint's comments herein are primarily made in the context of CMBS issuances but are equally applicable to RMBS and other forms of ABS.

[2] Request for Comment, Credit Rating Standardization Study, Securities and Exchange Commission Release No. 34-63573; File No. 4-622 (December 17, 2010), 75 Fed. Reg. 62718 (December 23, 2010) [herein, the "Request for Comment"].

[3] References to "Section 939(h)" mean and refer to Section 939(h) of Subtitle C, Improvements to the Regulation of Credit Rating Agencies, of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and references to "Subtitle C" mean and refer to such Subtitle C generally.

[4] References to "Rating Procedures" means and includes, collectively: credit rating criteria, policies, procedures and methodologies and similar items.

- eliminate innovation and competition by or among CRAs to determine more accurate ratings and, on a surveillance basis, more timely rating actions or to develop more accurate, more up-to-date or more creative Rating Procedures;

- eliminate incentives for CRAs to invest in data, models, studies, personnel and other means to gain a competitive advantage within the CRA industry by developing more accurate, more up-to-date or more creative Rating Procedures;

- cause each CRA to incur significant transition costs in the process of implementing the Commission's Rating Procedures and reviewing them to determine, given potential liability concerns, from time to time whether to determine (or forego determination of) ratings based on the Commission's Rating Procedures;

- increase regulatory costs by requiring the Commission to promulgate and then continuously reevaluate and update its Rating Procedures; and

- <u>directly influence the market price, and resulting yields, of structured finance products</u> - which may be the most adverse consequence to investors, and the capital markets, that would arise from the Commission undertaking the role of a CRA, legislating Rating Procedures or serving as the single-source provider of domestic Rating Procedures.

Standardized Rating Procedures are the not the best means for the Commission to continue to simultaneously address five of its primary goals that have been the focus of certain NRSRO and issuer reforms over the past few years: (i) transparency of Ratings Procedures for structured finance products, (ii) increased competition among NRSROs for determining initial ratings of structured finance products, (iii) reduction of market-share concentration among NRSROs, (iv) reduction of ratings-shopping practices for initial ratings of structured finance products, and (v) reduction of conflicts of interest as between issuers of structured finance products and NRSROs that arise from the business model by which the issuer and other arrangers select and pay NRSROs hired to determine the initial ratings of their structured finance products.

Instead of implementing and monitoring standardized Rating Procedures, the Commission need only monitor and enforce compliance with its forthcoming rules regarding ABS issuer disclosure requirements and recent rules regarding NRSRO Ratings Procedures transparency.[5] If issuers and investors are not comfortable with a CRA's transparency of Rating Procedures, they can communicate their concerns to the CRA or need not hire that CRA for initial or surveillance ratings. For initial ratings of structured finance products, if a CRA is not transparent, then investors in that offering should demand that the issuer not hire that CRA, because that CRA will determine ratings that the investors cannot sufficiently analyze or understand. For surveillance ratings, if a CRA is not transparent, then its subscribers may either demand additional information or stop paying for ratings that the investors cannot sufficiently analyze or understand.

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[5] In 2010, the SEC proposed increased disclosure requirements under Regulation AB, Proposed Rule, <u>Asset-Backed Securities</u>, Securities and Exchange Commission Release Nos. 33-9117; 34-61858; File No. S7-08-10 (April 7, 2010), 75 Fed. Reg. 23328 (May 3, 2010) [herein, the "<u>Proposed ABS Rules</u>"], and increased disclosure requirements for NRSROs rating ABS, Final Rule, <u>Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act</u>, Securities and Exchange Commission Release Nos. 33-9175; 34-63741; File No. S7-24-10 (January 20, 2011), 76 Fed. Reg. 4489, 4504 (January 26, 2011).

Standardized Rating Procedures will create disincentives for CRAs who would otherwise strive to improve their Rating Procedures. Standardized Rating Procedures may also reduce the quality of credit ratings because they may allow marginal CRAs that would otherwise be unable to compete in the CRA market to maintain a market presence without adding any value. Standardized Rating Procedures are thus not in the best interests of investors and the capital markets.

Investors, and the capital markets, benefit when CRAs compete to develop timely and accurate ratings and, as part of that process, sufficiently disclose their Rating Procedures so that their ratings can be analyzed and understood. Meaningful competition among CRAs is beneficial to investors and the capital markets because, in a competitive environment, CRAs must perform in order to retain their clients or they will be out of business. Investors, and the capital markets, will not benefit from having all CRAs produce identical ratings based on standardized Rating Procedures even if those standardized Rating Procedures were fully transparent because there would be no impetus to develop competing opinions regarding ratings and Rating Procedures (and, if made part of the standardized rating requirements, rating outlooks, probability of default, loss given default or other opinions of future trends or performance).

If the Commission were to become the single-source provider of Rating Procedures, it would need to continuously reevaluate its Rating Procedures. For example, if the Commission were to mandate the use of certain market stress conditions, it would not only need to continuously reevaluate those conditions, it would also need to continuously reevaluate the data on which those conditions were based and whether additional types of data should be reviewed as part of the process of determining the approved market stress conditions. Additionally, ratings, particularly for CMBS, are not based solely on the compilation of historical and empirical data and modeling techniques. Ratings are also the result of reviews by experienced analysts of qualitative factors derived from the review of specific underlying properties and loans and reviews by experienced attorneys of ABS transaction documents and underlying loan and other legal documents. The impetus to develop standardized Ratings Procedures, or to standardize part of any Ratings Procedures such as market stress conditions, ignores the fundamental importance of qualitative analyses in the determination of ratings. Given its limited resources, the Commission cannot reasonably expect to capture all appropriate qualitative or subjective considerations in standardized Rating Procedures and make them superior to the efforts of the CRA industry operating in a meaningfully-competitive environment.

Regarding standardized credit rating symbology and terminology, credit rating symbology would only have the same meaning across CRAs if issued in accordance with standardized Rating Procedures but, as noted above, there are numerous adverse consequences to mandated standardized Rating Procedures.

As an alternative to implementing and monitoring standardized Rating Procedures, Realpoint believes that the Commission should focus its efforts on the feasibility and desirability of a "rotation system," by which certain NRSROs are assigned to determine ratings of structured finance products,[6] and, in connection with that decision, abandon the concept of

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[6] Section 939F of the Act, 15 U.S.C. § 78o-9(b)(2), requires the Commission to study "the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns [NRSROs] to determine the credit ratings of structured finance products." Id.

having the Commission[7] undertake the role of a CRA, legislate standardization of Rating Procedures or serve as the single-source provider of domestic Rating Procedures.[8] Realpoint's suggestions in regard to a rotation system may include having the Commission implement an application and interview process, similar to that used by the Federal Reserve in connection with the Term Asset-Backed Securities Loan Facility (TALF), for qualifying NRSROs for eligibility to participate in the rotation system. That process may include specific consideration of each NRSRO's track record with respect to the accuracy of its ratings and the timeliness of the accuracy and timeliness of ratings and rating actions, its Rating Procedures described in its respective Form NRSRO, its resources and structure and its ongoing or planned investments in data, models, studies, personnel and other means to increase the accuracy and timeliness of ratings and rating actions or to provide rating outlooks, probability of default, loss given default or other opinions of future trends or performance. A rotation system consisting of NRSROs acceptable to the Commission based on the above characteristics would promote the Commission's goals enumerated above while avoiding standardization which raises various issues and problems discussed herein.

A rotation system with proper qualifying procedures for NRSROs will permit the Commission to address its above-stated goals. The alternatives of having the Commission undertake the role of a CRA or legislate Rating Procedures or serve as the single-source provider of domestic Rating Procedures does not address the foregoing goals (other than perhaps a reduction of ratings-shopping practices but with a corresponding risk that the mandated Rating Procedures are not the best-available Rating Procedures). In addition, as further discussed below, standardization or mandates related to Rating Procedures do not equate to full transparency and in fact, may lead to confusion in understanding such procedures. In order to promote transparency, the reports or other data accompanying each rating should reference or describe the basis for any ratings, information about what the rating means and does not mean, and characteristics of each transaction and rating tailored to each ABS offering. Also, certain pending and final rules have or are considering issues of disclosure and transparency with respect to offering memoranda and Rating Procedures.[9]

Serial Response to Request for Comment[10]

> [1]   Is it feasible and desirable to standardize credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms?

No. As background for this response, Realpoint is of the opinion that the term "credit ratings terminology" includes not only all rating symbology (e.g., letters, numbers or symbols such as +/-) but also the definitions thereof (including the definitions of the technical, legal or other terms used therein). The term includes symbology and definitions for rating outlooks, probability of default, loss given default or other opinions of future trends or performance. To achieve standardization of "credit ratings terminology" among CRAs would require

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[7] In this context, the reference to the Commission means and includes not only the Commission or any division thereof but also any public or private utility or a self-regulatory organization. See Id.

[8] "[N]either the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any [NRSRO] determines credit ratings. 15 USCS § 78o-7(c)(2).

[9] Fn. 5 above.

[10] The questions listed below are set forth in the same order and numbered as in the Request for Comment.

standardization of all elements of "credit ratings terminology." For example, two CRAs may determine what appears to be an identical credit rating, based on symbology and definitions, but is not in fact an identical credit rating, because the CRAs use different stress levels (or other differing underlying Rating Procedures) to determine their respective ratings. Standardized symbology and terminology would only have the same meaning across CRAs if issued in accordance with standardized Rating Procedures and, as noted above, there are numerous adverse consequences to mandated standardized Rating Procedures.

What is feasible and desirable is for the Commission to require NRSROs s[11] to comply with the aforementioned rules regarding Ratings Procedures to: (i) provide a Form NRSRO, or its equivalent, to disclose the Rating Procedures and any other criteria, data, models or information necessary to evaluate its ratings, (ii) a description and definition of its ratings, including definitions of what the rating means and does not mean, and (iii) in the report or other information accompanying its rating on a deal-by-deal basis, which is delivered to the investors, an analysis of the characteristics of the transaction and factors considered in the rating. Each ABS offering contains unique assets, composition, qualitative factors, and quantitative factors and therefore, each rating and the basis for each rating reflects the dynamics of each deal and consideration of a wide range and mix of quantitative and qualitative factors. The factors vary based on the type of deal, asset types and locations, composition of the pool, structure of the deal, legal analysis, market data, deal service providers (e.g., servicers and trustees) and other factors. The Commission should adhere to its original goals - to foster transparency and competition and to prohibit conflicts of interest and anti-competitive practices such as ratings shopping - and should not undertake the development of a standardized lexicon of symbology and definitions, because standardization is merely a poor substitute for the continuation of appropriate reforms of the CRA industry.

Some level of standardization already exists in the capital markets. For example, certain terms, and their definitions, are nearly universally followed, either by reason of Regulation AB or the lexicon developed and implemented by industry groups and used in offering materials for structured finance products (such as "rated final distribution date"). The development and implementation of terminology and definitions for structured finance products should be left to the industry groups as an outgrowth of common commercial practices among issuers and investors. These capital market participants should develop, design and refine the meaning of the terms used to describe the securities, derivatives and other financial products that they buy, sell or hold, rather than be told by the Commission how to define the meaning of these terms.

[1.a]   Do commenters agree that the term "credit ratings terminology" as used in Section 939(h) of the Dodd-Frank Act refers to the symbols and numbers credit rating agencies use to denote credit ratings and the definitions and meanings they promulgate for those symbols and numbers? If not, what other (or additional) credit rating terminology should this study focus on? Commenters who identify other terminologies should indicate for all subsequent questions whether they are discussing the other terminologies or ratings symbols and numbers and their corresponding definitions and meanings.

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[11] Realpoint notes that the Request for Comment raises questions in regard to CRAs rather than NRSROs. Realpoint therefore asks the Commission to clarify whether the references, in the request for Comment, to CRAs is intended to mean NRSROs.

Realpoint is of the opinion that the term "credit ratings terminology" includes all rating symbology and the definitions thereof and of all terms used therein.

[1.b] Are there credit rating terminologies used by different credit rating agencies that are currently comparable? If so, please identify and explain how they are comparable.

No. Realpoint is of the opinion that the credit ratings terminology used by one CRA is not comparable to that of another CRA because CRAs use different Rating Procedures. Also, in some cases, a CRA may use identical symbology for different assets classes but the definitions of those symbols differ among those asset classes.

Another reason that credit ratings terminology is not comparable among CRAs arises from the frequency with which surveillance ratings or rating actions are issued and the frequency and level of review and analysis performed in connection with the underlying surveillance Rating Procedures. As has become evident over the past few years, stale ratings are not comparable to more recent ratings based on strong, recurring surveillance Rating Procedures.

Realpoint performs monthly surveillance of its rated CMBS. Realpoint's general Rating Procedures are summarized by documents available on Realpoint's website and on a deal-by-deal basis, in the reports or other data accompanying the respective rating. Realpoint applies a unique model and methodology, and considers both quantitative and qualitative factors, to determine ratings. Realpoint's Rating Procedures are independent of those of other CRAs. Realpoint strives for transparency in both its new-issue and surveillance Rating Procedures and in the manner in which such Rating Procedures are applied on a deal-by-deal basis. Realpoint believes that this level of disclosure and transparency should be the standard that is required of all CRAs.

Realpoint also seeks to give its investors an advantage in the market, as well as develop for itself a competitive advantage among CRAs, by including, as part of monthly surveillance, rating outlooks, probability of default, loss given default or other opinions of future trends or performance (including narrative summaries that accompany its monthly surveillance ratings). Realpoint is of the opinion that there is no need to standardize credit rating terminology among CRAs for opinions of this nature because, in a competitive environment, CRAs compete by offering and improving opinions of this nature. To standardize the development and definitions of rating outlooks, probability of default, loss given default or other opinions of future trends or performance would reduce the incentives of CRAs to improve upon their development of opinions of this nature or to invest in data, models, studies, personnel and other means to gain a competitive advantage by providing or improving upon opinions of this nature.

[1.c] Identify differences in the credit rating terminologies used by credit rating agencies. What is the significance of these differences?

One of the primary differences in credit rating terminology at this time is that certain CRAs add subscripts to their rating symbols to differentiate structured finance products from corporate or municipal bonds. This practice was recently implemented by certain CRAs, even though the Commission deferred consideration of whether to require distinct rating symbols to differentiate ratings for structured finance products from ratings of other financial

instruments,[12] in part because CRAs regulated within the European Union must include a symbol to differentiate a rating of a structured finance instrument rating from a rating of a corporate or other type of debt instrument.[13]

Realpoint has previously opined, and remains of the opinion, that there is no practical reason or purpose to requiring rating symbols to differentiate structured finance products from corporate or other debt securities. Investors do not need rating symbols to serve as an additional source of information for the type of security that the investor is considering. The implementation of different rating symbols for structured finance products increases differences in credit rating terminology and permits the development of a separate set of credit rating terminology for structured finance products that will create confusion within the financial markets with respect to the ratings of, and impair the value of, structured finance products.

Rather than mandate different rating symbols for structured finance products, Realpoint is of the opinion that the definitions of those symbols and the description of the Rating Procedures underlying those symbols suffice to inform investors of the meaning of the symbol regardless of whether the instrument is a structured finance product, corporate debt security or municipal bond. Similarly, Realpoint is of the opinion that to differentiate structured finance products from corporate debt securities or municipal bonds without also differentiating corporate debt securities or municipal bonds incorrectly suggests that the characteristics, risks and underlying Rating Procedures: (i) for all structured finance products are substantially similar; and (ii) for all corporate debt securities and municipal bonds are substantially similar.

[1.d] What issues do commenters encounter when they seek to compare ratings from different credit rating agencies?

As an NRSRO that strives to operate independently of the ratings and practices of other CRAs, Realpoint does not generally undertake a detail comparison of its ratings or rating actions to those of other CRAs. That being said, Realpoint believes that the primary hindrance to such an analysis and comparison would be the lack of transparency in the underlying Rating Procedures of other CRAs. Two or more CRAs may determine what appears to be an identical credit rating but that rating is not in fact identical because the CRAs use different stress levels (or other differing underlying Rating Procedures) to determine their respective ratings.

Qualitative, or subjective, aspects of Ratings Procedures are difficult if not impossible to compare. The Commission is well aware that the Rating Procedures for ABS ratings include a substantial qualitative aspect. For example, in promulgating new NRSRO Rule 17g-7, the Commission noted that it expects an NRSROs to "draw upon its knowledge of industry standards, along with its own experience with previously-rated deals and its knowledge of the market in general," for purposes of the [Rule 17g-7] required comparisons."[14] These and other qualitative procedures are part of ABS Rating Procedures.

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[12] Proposed Rules for Nationally Recognized Statistical Rating Organizations, SEC Release No. 34--61051, File No. S7-28-09 (November 23, 2009), 74 Fed. Reg. 63866, 63868 (December 4, 2009).

[13] The European Regulation on Credit Rating Agencies, Article 8(3).

[14] Final Rule, Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Securities and Exchange Commission Release Nos. 33-9175; 34-63741; File No. S7-24-10 (January 20, 2011), 76 Fed. Reg. 4489, 4504 (January 26, 2011).

[1.e]   Some credit rating agencies employ multiple credit rating scales designed to distinguish between different types of issues and/or issuers. For example, a credit rating agency may employ different credit rating symbols for ratings of long term securities, short term securities, money market funds, claims paying abilities of insurance companies, and issues and/or issuers in different jurisdictions. Do commenters believe that some types of credit rating symbols used by credit rating agencies are more or less suitable to standardization? Is it feasible or desirable to use a single credit rating scale for all types of issues and issuances? Should a standardized credit rating scale include separate symbols for different types of credit ratings? If so, what separate credit symbols should be included in the standardized credit rating terminology? Alternatively, should credit rating terminologies for some types of issues or issuers not be standardized? If so, for which types of issuers or issuances?

Realpoint is of the opinion that it is both feasible and desirable to have a single rating scale for structured finance products, corporate debt securities and municipal bonds. Coupling a single scale with appropriate levels of disclosure of underlying Rating Procedures will enable investors to better understand the ratings and to compare ratings of assets of different asset classes. Developing multiple rating scales with different levels of disclosure of underlying Rating Procedures will confuse investors as to the meaning of all of the ratings and impair the ability of investors to compare the ratings of assets of different asset classes.

Whether the question is how to create incentives for CRAs to improve their Rating Procedures, or how to make rating symbology of different CRAs comparable, standardization is not the answer. Instead of implementing and monitoring standardized Rating Procedures, the Commission need only monitor and enforce compliance with its most recent rules regarding issuer disclosure requirements and NRSRO Ratings Procedures transparency.[15] For initial ratings of structured finance products, if a CRA is not transparent, then investors should demand that the issuer not hire that CRA, because that CRA will determine ratings that the investors cannot sufficiently analyze or understand. For surveillance ratings, if a CRA is not transparent, then its subscribers may either demand additional information or stop paying for ratings that the investors cannot sufficiently analyze or understand.

[1.f]   The credit ratings of some credit rating agencies address probability of default while the ratings of other credit rating agencies address expected loss. Other rating scales may address other metrics such as, for example, distance to distress (e.g., with respect to the public finance ratings of some credit rating agencies). Do commenters believe that it is more or less desirable to have credit ratings of different credit rating agencies address different risks? Why?

Realpoint believes that is desirable and valuable to have competing opinions regarding ratings and Rating Procedures. Realpoint competes as a CRA by continuously reevaluating and improving both the quantitative, as well as the qualitative, or subjective, aspects of its Rating Procedures.

Standardized Rating Procedures are not in the best interests of investors and the capital markets. What is in the best interests of investors and the capital markets is the presence in the market of CRAs that must compete to develop timely and accurate ratings and, as part of that process, sufficiently disclose their Rating Procedures so that their ratings can be analyzed and

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[15] Fn. 5 above.

understood. Meaningful competition among CRAs is beneficial to investors and the capital markets because, in a competitive environment, CRAs must perform in order to retain their clients or they will be out of business. Investors, and the capital markets, will not benefit from having all CRAs produce identical ratings based on standardized Rating Procedures even if those standardized Rating Procedures were fully transparent because there would be no impetus to develop competing opinions regarding ratings and Rating Procedures and (if made part of the standardized rating requirements) rating outlooks, probability of default, loss given default or other opinions of future trends or performance.

[1.g]   Some credit rating agencies employ credit rating modifiers including, for example, "credit watch" and "rating outlook" to indicate a view as to the likelihood that a credit rating may change. Do commenters believe that it is feasible or desirable to include such credit rating modifiers in a standardized credit rating terminology? Why?

Realpoint is of the opinion that there is no need to standardize credit rating terminology among CRAs for opinions of this nature because, in a competitive environment, CRAs compete by offering and improving opinions of this nature. To standardize the development and definitions of rating outlooks, probability of default, loss given default or other opinions of future trends or performance would reduce the incentives of CRAs to improve upon their development of opinions of this nature or to invest in data, models, studies, personnel and other means to gain a competitive advantage by providing or improving upon opinions of this nature.

[1.h]   If commenters believe that standardizing credit ratings terminology is desirable and feasible: i. What level of detail should be included in the standardized credit rating terminology? ii. What mix of quantitative and qualitative factors should be referenced in each rating definition? iii. Should a standardized credit rating terminology address likelihood of default, expected loss, or some other metric? iv. Some credit rating agencies issue a number of broad categories of credit ratings that can be further delineated using identifiers (e.g., pluses and minuses) to allow additional gradations of ratings. How many gradations of credit quality should be included in a standardized terminology for credit ratings? v. Should a standardized credit rating terminology employ a separate terminology for certain asset classes (e.g., for structured finance ratings)? Are there asset classes or types of ratings, such as short term or financial strength ratings, where a separate terminology should be considered? vi. What organizations or combination of organizations should be responsible for developing and administering the standardized credit rating terminology? For example, should the Commission develop and administer the standardized terminology? Should an independent board or organization be formed to develop and administer the standardized terminology? vii. What time period should be allowed for credit rating agencies to map their existing ratings to a new credit rating terminology, or for private contracts and investment management agreements that reference credit ratings to be changed to refer to the standardized terminology? viii. Do commenters believe that it would be more desirable for credit rating agencies to retain their existing credit rating terminologies and make publicly available detailed information on how each credit rating agency's ratings can be mapped to a standardized terminology? Or would it be more desirable if the credit rating agency used only the standardized terminology?

Realpoint is of the opinion that there is no need for a standardized credit rating terminology. Even if a standardized credit rating terminology were to be developed, it would have no meaning without an appropriate level of transparency and disclosure of Rating

Procedures. Ratings Procedures encompass legal and other qualitative analysis not merely a quantitative analysis based on the application of economic data within a model.

Realpoint thus believes that it is more desirable for credit rating agencies to retain their existing credit rating terminologies than to have a standardized terminology and to make publicly available detailed information on how each credit rating agency's ratings are determined. Realpoint does not believe that CRAs should be required to "map" their ratings symbols to a standardized terminology. Any such mapping will be confusing and misleading. For liability reasons, CRAs will not want to publish a map that permits the interpretation that a rating that it issued and defined is identical to another rating that someone else has defined. Mapping requirements would also cause each CRA to incur significant transition costs because the process would require far more than linking one set of rating symbols to another, corresponding set of rating symbols, as the mapping process would also require each CRA to undertake a review and analysis of the credit rating terminology against which it is charged with mapping its own ratings symbols.

Existing requirements for CRAs to describe their Rating Procedures in their Form NRSRO available to investors, and on a deal-by-deal basis in the report or other data accompanying the rating, is both sufficient and consistent with the Commission's goals with respect to its most recent final rules regarding NRSRO Ratings Procedures transparency and forthcoming rules regarding ABS issuer disclosure requirements,[16] such as the requirement[17] of a preliminary prospectus[18] that includes standardized data disclosures[19] and enhanced narrative information[20] and that affords investors more information and more time to review such information[21] including asset-level information,[22] the waterfall computer program[23] and other disclosure requirements.[24] One of the reasons for providing this ABS offering information is to permit investors to perform their own analysis. Similarly, if investors understand the Rating Procedures through transparency by each CRA, an investor can perform its own analysis of the credit rating based on the Rating Procedures used to derive that rating.

[2.] Is it feasible and desirable to standardize the market stress conditions under which credit ratings are evaluated?

No. To standardize stresses would eliminate CRAs' incentives to improve this aspect of the ratings process. If stress levels were standardized, CRAs would have no incentive to review and evaluate, and attempt to develop more accurate, stress levels. Removing this aspect

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[16] Fn. 5 above.

[17] See generally, Proposed ABS Rules.

[18] Proposed ABS Rules at page 23335.

[19] E.g. Proposed ABS Rules at page 23355-23364.

[20] E.g. Proposed ABS Rules at page 23381, 23385.

[21] The SEC's "proposals are intended to provide investors with timely and sufficient information, . . . reduce the likelihood of undue reliance on credit ratings, and help restore investor confidence in the representations and warranties regarding the assets." Proposed ABS Rules at page 23330.

[22] E.g., Proposed ABS Rules at pages 23355-23356.

[23] E.g., Proposed ABS Rules at page 23378.

[24] Proposed ABS Rules at pages 23354-23389.

of the ratings analytical process from the CRAs would reduce competition among CRAs in this regard.

Consistent with comments above regarding standardized Rating Procedures generally, standardized stresses are not in the best interests of investors and the capital markets because CRAs would no longer compete, and would have no incentive to compete, by developing accurate stress levels. The standardized stress levels might lag behind the stress levels that would otherwise be developed in a competitive CRA market. Potential liability issues might render CRAs unwilling to issue ratings based on standardized stresses with which they disagree.

As with other aspects of Rating Procedures, CRAs should disclose how stress conditions are applied in their models and other quantitative analyses for determining ratings.

As the Commission can appreciate from its development of data points for CMBS offerings,[25] the Rating Procedures for a CMBS pool are very different from the Rating Procedures for an RMBS pool. Rating CMBS is not merely a quantitative analysis of a specific pool of commercial loans or commercial real estate. Rating CMBs requires a qualitative, or subjective, evaluation of the loans (including a legal analysis of the loan terms) and the properties, such as their market, location, tenant mix and other property-specific attributes. For CMBS, each underlying property is unique.

Stress conditions need to be constantly reevaluated. The historical benchmarks used to develop stress conditions are constantly evolving. Thus, stress levels should be constantly evolving. Stresses applied in models and other quantitative analyses can and should change for changes in market conditions or changes warranted by analysis of historical or empirical data.

[2.a]   Under what market stress conditions are credit ratings currently evaluated?

[2.b]   To what degree do commenters believe that credit rating agencies currently identify the market stress conditions under which credit ratings are evaluated? To the extent these market stress conditions are identified by credit rating agencies, do commenters believe that the market stress conditions used by different credit rating agencies at comparable credit rating levels are similar? If so, how are they similar? If not, how do they differ?

One of the ways that Realpoint competes as a CRA is by investing in the development, purchase and analysis of data with which to run models or perform other quantitative analysis, models, studies, personnel and other means to gain a competitive advantage and thereby increase the accuracy and timeliness of their ratings and rating actions or to provide rating outlooks, probability of default, loss given default or other opinions of future trends or performance. Realpoint's models are dynamic quantitative analysis tools, which are constantly evolving and updated based on analysis and data. Realpoint considers its models to comprise valuable proprietary information.

As part of its quantitative analysis and models, Realpoint invests substantially in the determination of appropriate stress levels. The stress levels applied in the models are updated based on analysis and data. Realpoint constantly reevaluates historical benchmarks used to develop stress conditions and for whether its stress levels should be updated for changes in

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[25] Proposed ABS Rules at page 23363-64 and 23470-474

market conditions or other changes warranted by analysis of historical or empirical data. As a result of its investment in the determination and application of appropriate stress levels, Realpoint considers the stress levels that it uses in its models valuable proprietary information.

Realpoint continuously reviews ways to improve the accuracy of its ratings and the timeliness of its rating actions. Realpoint tends to be conservative in its application of stress levels. Realpoint applies the highest stress level to the highest rating category. Realpoint consolidates the information and data that it receives or develops to refine the benchmarks for worst-case scenarios at the highest rating levels and the benchmarks for each of the other rating levels. Also as part of evaluating market stress conditions, Realpoint considers the lending environment, because of the need to consider the risk of default upon maturity of underlying loans.

Realpoint has an incentive to invest in the determination of accurate stress levels because it is competing with other CRAs to provide accurate ratings. Realpoint performs monthly surveillance; therefore, Realpoint is able to quickly adjust the stresses applied in its CMBS model for changes in market conditions or changes warranted by analysis of historical or empirical data.

[2.c]   Do commenters believe that market stress conditions can be defined in a consistent manner across different industry sectors and geographic regions?

No. Realpoint believes that market stress conditions must be determined by reference to (i) the specific types of properties in the asset pool and (ii) by reference to data for the national level, regional level and MSA level. Realpoint believes that, as among structured finance products, CMBS is particularly sensitive to local conditions because the underlying properties that secure the underlying loans are sensitive to local conditions (as well as higher-level conditions).

[2.d]   Do commenters believe that standardized market stress conditions are equally relevant to the evaluation of all asset classes or issuers? For example, are there some asset classes or issuers where the relative degree of idiosyncratic risk versus systemic risk differs? If so, are market stress conditions less relevant, for example, to asset classes and issuers where there is a higher level of idiosyncratic risk?

Realpoint believes that market stress conditions are relevant to all structured finance products.

[2.e]   If commenters believe that it is feasible and desirable to standardize the market stress conditions under which credit ratings are evaluated: i. What parameters should be defined in these market stress conditions? For example, unemployment rates, declines in GDP and financial market declines are widely referenced indicators of market stress. What other parameters do commenters believe should be defined? ii. How should market stress conditions differ across different industry sectors and geographic regions? iii. Should these stress conditions reference specific historical market stresses such as, for example, the Great Depression or the 2008 financial crisis? iv. Should each credit rating level have its own specifically defined stress conditions?

Realpoint does not believe that it is feasible and desirable to standardize the market stress conditions under which credit ratings are evaluated.

[3.]   Is it feasible and desirable to require a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress?

Realpoint does not believe that it is feasible and desirable to implement any form of standardized stresses or any comparison to any set of standardized conditions. Although data and quantitative metrics are important to the application of any model, qualitative analysis is also important.

[3.a]   To what extent do credit rating agencies or others assign a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations? i. To what extent do commenters believe that the correspondence is similar for comparable ratings from different credit rating agencies? ii. To what extent do commenters believe that the correspondence is similar across industry sectors and geographical regions? iii. To what extent do commenters believe that the correspondence is constant throughout the economic cycle? iv. To what extent do commenters believe that the correspondence has been constant over time? For example, do commenters believe that the range of default probabilities and loss expectations corresponding to the credit ratings of different credit rating agencies have become more or less conservative over time?

The impetus to develop standardized Ratings Procedures, or to standardize part of any Ratings Procedures such as market stress conditions, ignores the fundamental importance of qualitative analyses in the determination of ratings. Ratings Procedures, particularly for CMBS, are not based solely on the compilation of historical and empirical data and modeling techniques. Ratings are generally the result of a consideration, in the aggregate, of (i) quantitative factors and (ii) qualitative factors such as a review by experienced analysts of qualitative factors derived from the review of specific underlying properties and loans and a legal analysis of various legal aspects of the loans and securitization documentation. For RMBS and perhaps other forms of ABS, there may be a greater reliance on quantitative results but there is always to some degree qualitative analyses in the determination of ratings.

Further, quantitative and qualitative analyses may differ for each type of underlying property or asset in a pool, each of which is subjected to a distinct and extensive set of criteria.

Thus, although there is a correlation between a rating and the related quantitative modeling results of the probability of default, loss given default or other risks such as default upon maturity in an unfavorable lending environment, that correlation may not be constant based on qualitative analysis of other factors that are part of the applicable Rating Procedures.

Realpoint is of the opinion that it is not practical to develop a direct and constant correspondence between credit ratings and a range of default probabilities and loss expectations and to compare those results among CRAs. Further, Realpoint is of the opinion that CRAs have differing opinions regarding CMBS default probabilities and loss expectations for different geographic regions and different types of properties within those regions

[3.b]   Does the ability to assign a correspondence between credit ratings and a range of default probabilities and loss expectations in a sector vary depending on the degree to which a rating methodology for that sector is more or less quantitative in nature? Are there other factors, such as the quality or amount of historical performance data or

structural complexity that may make it more or less difficult to assign a correspondence between credit ratings and a range of default probabilities and loss expectations?

Yes, qualitative analyses are a substantial component of Rating Procedures.

[3.c] Does the likelihood of rating transitions for similarly rated assets vary among asset classes? If so, how should variation in the likelihood of rating transitions be addressed when a quantitative correspondence is assigned between credit ratings and a range of default probabilities and loss expectations?

CMBS ratings migrate based on defeasance as well as default. The likelihood of rating migrations is reported in part by the additional ratings information provided by rating outlooks, probability of default, loss given default or other opinions of future trends or performance.

[3.d] Is there a role for market-based measures such as credit spreads or option-based approaches (i.e., Merton-type models which provide a distance to default measure based on equity prices) in determining a correspondence between credit ratings and a range of default probabilities and loss expectations?

Realpoint is of the opinion that, with respect to CMBS, it is not practical to develop a direct and constant correspondence between credit spreads and a range of default probabilities and loss expectations and to compare those results among CRAs. Credit spreads may be influenced by factors, such as yields and liquidity risk, that are not part of the traditional credit rating, which is an opinion regarding the likelihood that the issuer will repay its financial obligation in accordance with its terms.[26] Credit spreads may be useful for making buy, sell or hold investment decisions based on yield and risk, while credit ratings are opinions that are expressly stated not to constitute investment advice. Credit spreads may be useful for analyses regarding capital or loss reserves, because credit spreads are based in part on pricing, but credit ratings, or more specifically, timely credit rating actions, effect pricing in advance of the resulting effect on the credit spreads.

[3.e] If commenters believe that requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress is feasible and desirable: i. What factors should be considered in determining the range of default probabilities and loss expectations associated with each rating? Should specific time horizons be specified for each default probability and loss expectation range? If so, how many different time horizons should be specified for each credit rating, and what are appropriate time horizons? ii. The ratings of some credit rating agencies primarily address probability of default while others address expected loss. Should credit rating agencies be allowed to choose whether their ratings address one or the other? Should a single rating address both probability of default and loss expectation or should default probabilities and loss

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[26] Rating agencies are not responsible for and do not opine on pricing or credit spreads. Credit ratings "are, at their most basic level, an opinion regarding the likelihood the issuer will repay its financial obligation" in accordance with its terms. U.S. Securities and Exchange Commission Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets (Jan. 24, 2003), at page 25. "In addition to rating actions, rating agencies may also publish rating outlooks. An outlook is an opinion on the future direction of the rating." Id., at page 27.

severity be addressed separately? iii. What are the views of commenters on how the accuracy of the quantitative correspondence assigned by a given credit rating agency between its credit ratings and a range of default probabilities and loss expectations should be measured?

Realpoint does not believe that it is feasible or desirable to require a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress.

CRAs should be allowed to choose whether their ratings address probability of default, expected loss or both and to publish a single rating that addressed both probability of default and loss expectation provided that the rating is properly defined and the underlying Rating Procedures disclosed.

[4.]   Is it feasible and desirable to standardize credit rating terminology across asset classes, so that named credit ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity?

Realpoint does not believe that it is feasible or desirable to standardize credit rating terminology across asset classes.

[4.a]   To what degree do commenters believe that credit ratings are currently comparable across asset classes? For example, do commenters believe that credit ratings of structured finance products or municipal securities are comparable to credit ratings in other sectors?

At this time, Realpoint does not rate more than one asset class. Credit ratings issued by CRAs that rate multiple classes of assets should be capable of comparison across asset classes if transparency and a description of the Rating Procedures is considered in conjunction with the respective ratings. With appropriate transparency, credit ratings can be comparable across asset classes without standardized credit rating terminology across asset classes.

[4.b]   In cases where credit rating agencies currently use the same credit rating terminology for multiple asset classes, what is the view of commenters on the adequacy and transparency of the procedures credit rating agencies use to achieve comparability?

Credit ratings issued by CRAs that rate multiple classes and, in so doing, use the same credit rating terminology for all asset classes, should clearly disclose the underlying Rating Procedures. With appropriate transparency, credit ratings can be comparable across asset classes without standardized credit rating terminology across asset classes.

[4.c]   What mix of quantitative and qualitative factors should be considered when standardizing credit rating terminology across asset classes, so that named credit ratings correspond to a standard range of default probabilities and expected losses? i. To what degree should standardization be based on quantitative factors such as, for example, historical performance metrics including rating transition and default studies? What other quantitative factors should be considered? ii. To what degree should standardization be based on qualitative factors such as, for example, analyst judgment regarding the comparability of credits from different sectors? What other qualitative factors should be considered? iii.
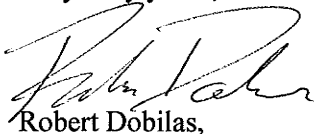
As previously discussed, a wide range and mix of quantitative and qualitative factors are considered for each transaction to derive a rating. The factors vary based on the type of deal, asset types and locations, composition of the pool, structure of the deal, legal analysis, market data, deal service providers (e.g., servicers and trustees) and other factors.

[4.d] Are there asset classes where the risk characteristics of the asset class, limitations on the quality of data, structural complexity, limitations on historical performance data, or other factors make it more difficult to apply to that asset class a standardized credit rating terminology which applies to other asset classes and issuers so that named ratings correspond to a standard range of default probabilities and expected losses?

The Rating Procedures for a CMBS pool are very different from the Rating Procedures for an RMBS pool. Rating CMBS requires both a quantitative analysis and a qualitative evaluation of the loans (including a legal analysis of the securitization documents and certain loan terms) and the properties, such as their market, location, tenant mix and other property-specific attributes. For CMBS, each underlying property is unique. For CMBS, standardized Ratings Procedures such as market stress conditions would incorrectly minimize the fundamental importance of qualitative analyses in the determination of ratings.

Thank you for the opportunity to respond to the Request for Comment. Please do not hesitate to contact us if you have any questions.

Very truly yours,

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