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Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
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Re: *Solicitation of Comment to Assist in Study on Assigned Credit Ratings, File No. 4-629*

Dear Ms. Murphy:

DBRS, a nationally recognized statistical rating organization ("NRSRO"), appreciates the opportunity to comment on the above-referenced study that the Commission is undertaking pursuant to Section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[1] Among other things, this study will assess the feasibility of establishing a system in which a utility or a self-regulatory organization (SRO) selects NRSROs to rate structured finance products. After completing its study, the Commission must furnish Congress with a report containing the study's findings and any recommendations for statutory or regulatory changes necessary to implement those findings.[2]

In addition to mandating the study and report to Congress, Section 939F also has a rulemaking component. In this regard, the statute directs the Commission, by rule, to establish a new system for the assignment of NRSROs to rate structured finance products *as the Commission determines is necessary or appropriate in the public interest or for the protection of investors.*[3] If this threshold determination is made, the system the SEC establishes must implement a provision that was proposed to be included in the Dodd-Frank Act, but was never enacted, unless the Commission determines that an alternative system would better serve the public interest and the protection of investors. Although Section 939F is awkwardly constructed, DBRS

[1] *Solicitation of Comment to Assist in Study on Assigned Credit Ratings*, SEC Release No. 34-64456 (May 10, 2011), 76 Fed. Reg. 28265 (May 16, 2011) ("Request for Comment").

[2] This report must be submitted to the Senate Committee on Banking, Housing and Urban Affairs and the House Financial Services Committee by July 21, 2012, two years after the Dodd-Frank Act's enactment.

[3] Dodd-Frank Act, §939F(d).

submits that the correct reading of the provision requires the Commission to make the threshold public interest/protection of investors determination before engaging in *any* new rulemaking on assigned credit ratings. If the first required determination is made, the Commission must then determine that the system suggested by Congress is the best alternative. A contrary reading of this provision would render the Commission's feasibility study superfluous.

Section 939F also contains a rule of construction confirming that this provision does not limit or suspend the Commission's other rulemaking authority.[4] Such authority presumably includes the power under Section 36 of the Securities Exchange Act of 1934 ("Exchange Act") to exempt any person, security or transaction (or any class of same) from any provision of the Exchange Act, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

The unenacted provision referenced in Section 939F -- introduced by Senator Al Franken (D-MN) and commonly referred to as the "Franken Amendment" -- would have added a new Section 15E(w) to the Exchange Act.[5] As described in more detail below, Section 15E(w) would have prevented issuers, sponsors or underwriters of structured finance products from choosing the NRSRO(s) that determine the initial credit ratings on such products. Instead, Section 15E(w) would have transferred the NRSRO selection process to a new SRO known as the Credit Rating Agency Board (the "CRA Board" or "Board"). The Board would administer a new regulatory regime for an elite cadre of NRSROs, to be known as "Qualified NRSROs," who would be the only rating agencies allowed to determine initial credit ratings on structured finance products.

Although DBRS understands the need to enhance the quality of structured finance credit ratings by reducing the potential for conflicts of interest and increasing competition among rating agencies, we believe that establishing a centralized system of hiring NRSROs to rate structured finance products is neither necessary nor appropriate in the public interest or for the protection of investors. These goals are better served by measures that require NRSROs to manage conflicts effectively and that give investors the tools they need to make informed choices about which credit ratings to employ in making their investment decisions. As explained below,

[4] Dodd-Frank Act, § 939F(d)(2).

[5] *See* Section 939D of H.R. 4173 (111th Congress) as passed by the Senate on May 20th 2010. Section 939F supplanted Section 939D in the version of the Dodd-Frank Act that ultimately became law.

measures like these are already being implemented pursuant to other provisions of the Dodd-Frank Act. We further believe that a system such as the one described in the Franken Amendment would be unworkable, ineffective, counterproductive, and potentially harmful to the capital markets. Because we do not believe the threshold determination required by Section 939F can be made, we do not address alternatives to the Franken Amendment.

Please be advised that in addition to the views expressed in this letter, DBRS also endorses the views expressed in the comments on this matter submitted by the American Securitization Forum ("ASF").[6]

Establishing an Alternative System for Assigning Structured Finance Credit Ratings is Not Necessary in the Public Interest or for the Protection of Investors

As a result of the Dodd-Frank Act, the Commission has recently proposed substantial additions to and revisions of the comprehensive NRSRO regulatory regime established under the Credit Rating Agency Reform Act of 2006 ("2006 Act").[7] These new rules and rule changes, combined with certain self-effectuating provisions of the Dodd-Frank Act, address NRSRO conflicts of interest in a number of ways, including by requiring NRSROs to establish, maintain and enforce effective internal control structures;[8] requiring NRSROs to conduct "look-back" reviews when an employee involved in determining a credit rating goes to work for the rated entity or the issuer, underwriter or sponsor of the rated security;[9] requiring NRSROs to separate their sales and marketing activities from their analytical functions;[10] and requiring NRSROs to submit annual reports to the SEC assessing their compliance with the securities laws and with their internal policies and procedures, including conflict of interest

[6] Letter from Tom Deutsch, Executive Director, ASF to the Securities and Exchange Commission, dated September 12, 2011 (the "ASF Letter").

[7] *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* SEC Release No. 34-64514 (May 18, 2011), 76 Fed. Reg. 33420 (June 8, 2011).

[8] Dodd-Frank Act, §932(a)(2).

[9] Dodd-Frank Act, §932(a)(4) and proposed Rule 17g-8(c).

[10] Proposed Rule 17g-5(c)(8).

policies.[11] All these new measures are in addition to the substantial steps the NRSROs have already taken to prohibit, or manage and disclose, potential conflicts.[12]

The Dodd-Frank Act and rules proposed thereunder also address the transparency of NRSROs' credit rating processes and ratings performance. In this regard, new controls will be imposed on the creation and application of credit rating procedures and methodologies;[13] extensive new disclosures (including special disclosure about third-party due diligence services for asset-backed securities) will be required to accompany each credit rating;[14] and existing requirements regarding the disclosure of default and transition data and ratings histories will be substantially modified to enable investors to make meaningful comparisons of rating performance across NRSROs.[15] Finally, the quality of NRSRO credit ratings will be addressed by requiring firms to implement analyst training, experience and competence standards and a program for testing ratings personnel.[16]

DBRS respectfully submits that the cumulative effect of all these measures obviates the need for a centralized, government-sponsored mechanism for hiring NRSROs to rate structured finance products.

Establishing an Alternative System for Assigning Structured Finance Credit Ratings is Not Appropriate in the Public Interest or for the Protection of Investors

The Salient Features of Section 15E(w)

Had it been enacted as part of the Dodd-Frank Act, Section 15E(w) would have established a regime that interposed a quasi-governmental entity between private parties (*i.e.,* issuers and credit rating agencies) in private (*i.e.,* not government-

[11] Dodd-Frank Act, §932(a)(5) and proposed Rule 17g-3(a)(8).

[12] These steps are described more fully in Exhibit 5 to Form NRSRO, as disclosed on each registered credit rating agency's website. A description of DBRS's policies and procedures to address and manage conflicts of interest is available at: http://www.dbrs.com/research/215038/exhibit-5.pdf.

[13] Dodd-Frank Act, §932(a)(8) and proposed Rule 17g-8(a).

[14] Proposed Rules 17g-7(a), 17g-10 and 15Ga-2.

[15] Proposed Rule 17g-7(b) and proposed changes to Form NRSRO, Exhibit 1.

[16] Dodd-Frank Act, §936.

related) business transactions. A system modeled on Section 15E(w) would operate as follows:

The SEC would establish a CRA Board comprised of at least seven members, one of whom would represent the issuer industry, one of whom would represent the rating agency industry, one of whom would be "independent" and four of whom would represent the investor industry, but not also represent issuers.[17] The Commission would select the initial Board members and would establish procedures for the nomination and election of future members.

The CRA Board's first task would be to conduct a study of the securitization and ratings process and make recommendations to the Commission, who then would adopt rules governing the operation of the Board.[18] The Board would be authorized to adopt its own rules as well. Once the regulatory framework was in place, the Board would begin accepting applications from NRSROs seeking to become "Qualified" NRSROs with respect to one or more categories of structured finance products. In order to attain this designation, an NRSRO would have to submit, among other things, information regarding the firm's institutional and technical capacity to issue credit ratings.[19] The Board would then select a pool of Qualified NRSROs with respect to each category of structured finance products.

An issuer seeking an initial credit rating for a structured finance product would be forbidden to engage an NRSRO to produce such a rating.[20] Instead, the issuer would be obliged to ask the CRA Board to select and engage a Qualified NRSRO to perform this task at the issuer's expense. In making this selection -- which may be done on a lottery, rotating assignment or other basis -- the CRA Board would consider the information submitted by the Qualified NRSRO regarding the firm's institutional and technical capacity to issue credit ratings, feedback from institutional investors and evaluations of the Qualified NRSRO's past performance and the effectiveness of its methodologies.[21] The one thing the Board would not be allowed to consider would be the opinion of the issuer on whose behalf the selection is being made.

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[17] The Commission can create a larger Board if it wishes, so long as there are an odd number of members and the proportionate composition remains the same. 15E(w)(2)(C).

[18] 15E(w)(2)(B) and (E).

[19] 15E(w)(3)(A).

[20] 15E(w)(4).

[21] 15E(w)(5)(B), 15E(w)(7).

While the selected Qualified NRSRO could refuse to accept the assignment to rate the structured finance product, it could do so only if it supplied the CRA Board with a written explanation of the refusal. This written explanation would be submitted to the Commission, who would include it in the annual inspection report the Commission makes public pursuant to Section 15E(p) of the Exchange Act.[22] If a Qualified NRSRO refused a selection to rate a structured finance product, the CRA Board would repeat the process to select another Qualified NRSRO.

A Qualified NRSRO that issued an initial rating at the CRA Board's request could charge reasonable fees to the issuer. Both the Commission and the Board would be authorized to promulgate rules in this area.[23] The Board would also be authorized to force an issuer who received an initial rating through the 15E(w) process to obtain a revised rating through the same process each time the issuer experiences a material change in circumstances, as the Board construes that term.[24]

Although an issuer would be prohibited from selecting an NRSRO to provide an initial rating on a structured finance product, the issuer would be allowed to obtain additional credit ratings from one or more NRSROs of its own choosing, so long as an initial rating is issued through the 15E(w) process.[25] Likewise, an NRSRO not engaged or paid by the issuer, would be free to rate the subject security.[26] In either case, however, the resulting ratings would not be considered "initial" credit ratings.

By forcing one private party to deal with another private party of the government's choosing in a private business transaction, the Section 15E(w) system would be without precedent.[27] It also would raise legal issues under the Fifth Amendment of

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[22] This provision was added by Section 932(a)(8) of the Dodd-Frank Act.

[23] 15E(w)(8)(A) and (B).

[24] 15E(w)(13).

[25] Section 15E(w)(9).

[26] 15E(w)(10).

[27] It has been suggested that precedent can be found in government contracts for commercial services provided to the public. This is a false analogy. In the government contract situation, the government engages private party "A" to provide a service to the public that the government would otherwise perform itself. "A" in such a case is acting as a proxy for the government. When private party "B" deals with "A," it is doing so to obtain a public service that it otherwise would obtain from the government itself.

In the NRSRO situation, by contrast, the government is not outsourcing a service it otherwise would

the U.S. Constitution, to the extent that interference with issuers' or NRSROs' contract rights rises to the level of a taking without just compensation or to the extent that this provision is so arbitrary and irrational as to violate the Fifth Amendment's Due Process Clause. However, we need not resolve the legal feasibility issue at this juncture, because as illustrated below, the factual impediments to this approach are so overwhelming.

The Section 15E(w) System Would Be Unworkable

The successful operation of the Section 15E(w) System depends on the existence of a competent and effective CRA Board and a sufficiently deep pool of Qualified NRSROs. As things stand today, neither of these is possible.

To perform the tasks assigned to it, the Board must be supported by a highly skilled staff capable of evaluating the credit rating process for each type of existing and future structured finance product, and able to assess the methodologies and performance metrics of each rating agency that chooses to participate in the Section 15E(w) System.[28] Before the first application from a prospective Qualified NRSRO is submitted, the staff must help the Board conduct a study of the securitization and ratings process, establish a framework for evaluating rating agency applications, and adopt rules of operation.[29] All of this must be done without any funding whatsoever.

Although Section 15E(w) authorizes the Board to levy fees from Qualified NRSROs and applicants therefor "as necessary to fund expenses of the Board,"[30] no provision is made to defray the Board's considerable start-up expenses. Just as lack of funding has caused the Commission to defer the creation and staffing of an Office of Credit

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provide to the public. Instead, it is interposing itself between two private parties -- the issuer and the rating agency of the issuer's choice -- in a securities transaction that does not otherwise involve the federal government.

[28] As the ASF Letter notes, assembling such a specialized credit rating staff has posed challenges for the Commission in conducting its own NRSRO oversight program. ASF Letter at 17, *citing, Securities and Exchange Commission: Action Needed to Improve Rating Agency Registration Program and Performance-Related Disclosures*, GAO Report 10-782 (September 2010) at 10. Attracting and retaining such personnel would almost certainly be difficult for the CRA Board as well.

[29] Although Section 15E(w)(2)(A) suggests that the Board should be in a position to begin selecting Qualified NRSROs to issue ratings within 1 year after the Board is created, it is likely to take much longer to reach that point.

[30] 15E(w)(2)(D).

Ratings pursuant to Section 932 of the Dodd-Frank Act,[31] so too would lack of funding preclude the creation and staffing of the CRA Board.

Even if the CRA Board could somehow spontaneously generate, it would fail for lack of a sustainable funding mechanism going forward. As the ASF Letter explains, it is likely to cost at least $ 300 - 400 million to operate the Board.[32] Under the best of circumstances, this expense would have to be divided among only four or five rating agencies, and would be in addition to the costs of complying with whatever extra layer of regulation Qualified NRSRO status might entail. At the end of the day, the cost of participating in the Section 15E(w) System would be so high that it would discourage all but the largest rating agencies from even trying.

The link between regulatory burdens and parties' willingness to engage in NRSRO credit rating activities is not hypothetical. Since the 2006 Act was implemented, regulatory burdens have caused two NRSROs to withdraw their registrations in the class of credit ratings for issuers of asset backed securities;[33] one NRSRO to curtail plans to expand its rating activities;[34] and at least one rating agency to forego NRSRO registration altogether.[35]

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[31] *See* http://www.sec.gov/spotlight/dodd-frank/dates_to_be_determined.shtml.

[32] ASF Letter at 18. Although these figures are staggering, DBRS believes they are realistic. By way of reference, we note that in 2010, FINRA collected $ 428.6 million in regulatory fees from its broker-dealer members, and paid its top ten executives a total of almost $ 13 million in compensation. *FINRA 2010 Year in Review and Annual Financial Report* at 8 and 18.

[33] News Release, "R&I to withdraw from ABS NRSRO registration with USSEC" (May 17, 2010), available at http://www.r-i.co.jp/eng/body/regulatory_affair/info/2010/05/info_r-i_000251820_01.pdf; Letter from Makoto Utsumi, President and CEO, Japan Credit Rating Agency, Ltd., to Elizabeth M. Murphy, Secretary, SEC (October 18, 2010), available at http://www.jcr.co.jp/english/nrsro/pdf/Update_20101203.pdf.

[34] Letter from Larry G. Mayewski, Executive Vice President, A.M. Best Company to Elizabeth M. Murphy (August 8, 2011) at 9 ("In fact, [the] burdensome costs [of regulation] were a contributing factor in A.M. Best's recent decision to discontinue its expansion into bank and hospital ratings.")

[35] "Opening Remarks Concerning: 'Oversight of the Credit Rating Agencies Post Dodd-Frank,'" Testimony of James H. Gellert, Chairman and CEO, Rapid Ratings, International, Inc. before the House Committee on Financial Services, Subcommittee on Oversight and Investigations (July 27, 2011) at 5 ("Until there are benefits that outweigh the costs, we'll build our business outside the NRSRO framework").

Even if the cost of the Section 15E(w) System could somehow be eliminated, there still would not be enough Qualified NRSROs to make this mechanism work. As the Commission notes in the Request for Comment, the market for NRSRO structured finance ratings is exceedingly concentrated.[36] The following table illustrates the NRSROs' current level of activity in this area and gives a good idea of the firms' respective technical capacities to produce structured finance ratings.

Outstanding NRSRO Credit Ratings of Asset-Backed Securities[37]

NRSRO	Asset-Backed Securities
A.M. Best	54
DBRS	10,091
Egan-Jones	13
Fitch	64,535
Kroll	0
Moody's	101,546
Morningstar	8,322
S&P	117,900
Total	**302,461**

The Federal Reserve's experience in operating the Term Asset-Backed Securities Loan Facility ("TALF") is also instructive. Among the terms and conditions established for TALF borrowing was the requirement of minimum credit ratings on eligible collateral. To this end, the Board of Governors of the Federal Reserve System established a process by which the Federal Reserve Bank of New York ("FRBNY") could determine the eligibility of credit rating agencies to rate assets for purposes of TALF.[38] As a result of this process, the FRBNY determined that for asset-backed securities other than commercial mortgage-backed securities ("CMBS"), only DBRS, Fitch, Moody's and S&P were TALF-eligible rating agencies.[39] The TALF CMBS-Eligible rating

[36] Request for Comment at 7-8, 76 Fed. Reg. at 28267-68.

[37] These figures were drawn from each firm's most recent Form NRSRO.

[38] Board of Governors of the Federal Reserve System, "Extensions of Credit by Federal Reserve Banks," Regulation A; Docket No. R-1371, 74 Fed. Reg. 65014 (December 9, 2009).

[39] See Term Asset-Backed Securities Loan Facility: Frequently Asked Questions on Credit Ratings, available at http://www.newyorkfed.org/markets/talf_faq.html#7.

agencies were the same NRSROs, plus Realpoint LLC (now, Morningstar). It appears that under the best of circumstances, therefore, the entire pool of Qualified NRSROs would be no more than four or five rating agencies.[40] DBRS submits that such a pool would be too small to allow the Section 15E(w) System to work.

The Section 15E(w) System Would Be Ineffective

In addition to being unworkable, DBRS submits that the Section 15E(w) System would be ineffective, because it would neither eliminate potential conflicts of interest, nor have an appreciable effect on the highly concentrated market for structured finance credit ratings.

Conflicts of Interest

The Section 15E(w) System is premised on the erroneous notion that conflicts of interest can be eliminated from the process of issuing credit ratings. So long as operating a rating agency is a human endeavor, the party with the power to engage the rating agency will potentially have the power to exert an inappropriate influence over the credit ratings issued. Regardless of the rating agency's structure or the payment model it uses, potential conflicts of interest will always need to be managed and disclosed.

The credit rating assignment scheme created by Section 15E(w) would shift, rather than eliminate, existing conflicts of interest in the structured finance area. In so doing, it would actually create new conflicts that would be more numerous, more nuanced and harder to control than the conflicts that exist today. Among the conflicts that potentially could influence the Qualified NRSROs' ratings opinions are the following:

- *Government-related conflicts* – An NRSRO could construct its ratings opinions on U.S. debt in such a way as to increase the likelihood that the CRA Board (which would be established and overseen by the U.S. Government) would designate the NRSRO as a Qualified NRSRO and be generous with its structured finance rating assignments.[41]

[40] In fact, the Qualified NRSRO pool may be even smaller than this. The FRBNY's eligibility standard was just an objective, minimal experience-based test and not a subjective assessment of institutional and technical capacity and ratings performance as the Section 15E(w) System would be.

[41] The actions of certain agents of the federal government, including members of Congress and the Obama Administration before and after the recent downgrade by one NRSRO of U.S. debt, remove any doubt about the government's willingness to exert pressure on NRSROs.

- *Subscriber-related conflicts* – A Qualified NRSRO could construct its assigned structured finance ratings opinions in such a way as to curry favor with the investor-industry majority of the CRA Board in order to attract future subscription business from such members.[42]

- *Issuer-related conflicts* – A Qualified NRSRO could construct its assigned structured finance ratings opinions to attract future "additional" structured finance ratings business from the subject issuer, as permitted by Section 15E(w)(9), or to attract corporate or other non-15E(w) business from that issuer.

In addition to conflicts that could influence the Qualified NRSROs' behavior, a number of conflicts could affect the CRA Board's assignment decisions. The biggest conflict in this regard derives from the fact that the CRA Board depends for its very existence on the receipt of enormous fees from NRSROs to whom it has the power to direct business. Not only would the Board have an incentive to keep the Qualified NRSRO pool as large as possible, but it also would have an incentive to designate as Qualified NRSROs those firms with the deepest pockets, and to ensure that enough business is directed to such firms to perpetuate the 15E(w) System.

Other conflicts would involve the self-interest of specific members of the CRA Board. For example:

- Investor members could be called on to select Qualified NRSROs to rate products that relate to the members' existing or potential investments. This conflict is especially dangerous, because institutional investors are typically bound by investment guidelines or private contracts that require their portfolio securities to be rated by specified NRSROs.

- A rating industry member would be called upon to decide whether its competitors should be designated as Qualified NRSROs and then could be faced with a choice of directing rating business to his own firm or to that of a competitor.

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[42] Although NRSROs are typically compensated by issuers for credit ratings on structured finance products, all of the current NRSROs also market their services to subscribers who use the services for investment purposes. Such arrangements present a potential conflict of interest, because subscribers' existing investments or the transactions they enter into may be favorably or adversely affected by an NRSRO's credit ratings. *See* Rule 17g-5(b)(5) and Form NRSRO, Instructions to Exhibit 6.

- An issuer member could be called on to select a Qualified NRSRO to rate his own firm's deals or those of his competitors.

Establishing a complex system of recusals to address these permutations and combinations of conflicts would impede, if not destroy, the effectiveness of the CRA Board. The conflict management provisions found in Section 15E(w)(14) do not begin to address any of these issues.

Market Concentration

The Section 15E(w) System eliminates dynamic market forces from the process of selecting NRSROs to rate structured finance products, and instead creates a closed pool of rating agencies whose "Qualified" status depends on their past ratings activity, their technical and institutional capacities, and their ability to underwrite a costly new SRO. In so doing, the System virtually ensures that the current market concentration will continue indefinitely.

The Section 15E(w) System Would Be Counterproductive

In a number of respects, the Section 15E(w) System would thwart the purposes of the 2006 Act and the Dodd-Frank Act, or would otherwise conflict with those statutes and the rules thereunder.

Distorting the Role of the Federal Government in Rating Agency Matters

One of the primary goals of the 2006 Act was to replace the Commission's opaque and subjective NRSRO no-action letter designation process with a registration process that is objective and transparent. Under this statute, NRSRO status could be achieved by any credit rating agency with three years of experience; transparent rating methodologies, rating performance measurement statistics and conflicts of interest procedures; and a basic, objective level of market acceptance.[43] The Dodd-Frank Act opened up the NRSRO registration process even further by eliminating the 3-year experience requirement,[44] while enhancing NRSROs' obligation to disclose their ratings methodologies and performance histories.[45] Both the 2006 Act and the Dodd-

[43] Market acceptance is established by the submission of certifications from qualified institutional buyers regarding their use of the subject rating agency's credit ratings. *See* Exchange Act, §15E(a)(C).

[44] *See* Dodd-Frank Act, §932(b), eliminating former Section 3(a)(62)(A) of the Exchange Act.

[45] *See* the discussion at page 4, *supra.*

Frank Act were premised on the belief, with which DBRS agrees, that an informed and more transparent marketplace is the best judge of credit rating quality.

The Section 15E(w) System veers abruptly in the opposite direction. Under this regime, not only would an entity created and overseen by the SEC have the discretion to determine which NRSROs are "Qualified" and which are not, but that entity would also substitute its judgment for the judgment of the marketplace in hiring NRSROs to rate every structured finance deal subject to U.S. jurisdiction. In so doing, the 15E(w) System would be fundamentally at odds with the statute that created it.

Encouraging Undue Reliance on Credit Ratings

Another goal of the Dodd-Frank Act was to eliminate the public's over-reliance on credit ratings, which has been cited as a contributing factor in the financial crisis that began in 2008. The Dodd-Frank Act addresses this issue by directing the Commission and other federal agencies to remove references to credit ratings from federal regulations,[46] and by requiring NRSROs to publicly disclose the limitations of credit ratings and the types of risks such ratings exclude.[47] DBRS agrees that while credit ratings are an important tool to be used in making investment decisions, they are only one tool of many. DBRS further believes that the government should not encourage the public to accept credit ratings uncritically or to base their investment decisions on credit ratings alone.

However, that is precisely what the Section 15E(w) System would do. By having a government-sponsored Board designate Qualified NRSROs and select such firms to rate structured finance products based on the firms' institutional and technical capacity, the "effectiveness" of their methodologies, and the "accuracy" of their ratings, the 15E(w) System would send a clear message that these are ratings on which the public can safely rely. The assurance of reliability attendant to Board-assigned credit ratings would be all the more pronounced because the type of quality review contemplated by 15E(w) is so unique.[48]

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[46] Dodd-Frank Act, §939A.

[47] Exchange Act, §15E(s), added by Dodd-Frank Act, § 932(a)(8) and proposed Rule 17g-7(a)(1)(ii)(D).

[48] The federal securities laws are disclosure statutes. Neither the SEC nor an SRO typically opines on the substance of a securities offering or the quality of the parties involved therein.

Under these circumstances there can be no doubt that the Section 15E(w) System would create a moral hazard by the federal government. Such a hazard would not be erased by appending a boilerplate disclaimer to the Board-assigned ratings. If anything, DBRS believes that the disclosure required to accompany each Board-assigned rating would confuse and mislead the public.[49]

Stifling Competition among Credit Rating Agencies

A third goal of both the 2006 Act and the Dodd-Frank Act was to encourage competition among NRSROs. The Section 15E(w) System would set this goal back on its heels. To begin with, the very act of designating certain NRSROs as "qualified" suggests to the market place that the other NRSROs are "unqualified." Such a characterization could make it difficult for a firm that does not participate in the Section 15E(w) System to gain market acceptance for its ratings.

In addition to causing possible reputational damage, exclusion from the club of Qualified NRSROs also would preclude an NRSRO from being hired to determine initial ratings for structured finance products. Although issuers would be permitted to hire such NRSROs for "additional" ratings, the chance to produce such ratings may be a hollow prize, since it is the initial rating that investors look to at the closing of the transaction.[50]

Because of the enormous cost of underwriting the CRA Board, it is unlikely that any but the largest NRSROs could afford to become Qualified NRSROs. In effect, therefore, Section 15E(w) would establish a pernicious pay-to-play scheme that is antithetical to the notion of fair competition.

Conflict with Specific Statutory or Regulatory Provisions

In addition to being at odds with the goals of the 2006 Act and the Dodd-Frank Act, the Section 15E(w) System also would conflict with certain provisions of these statutes or the Commission's rules thereunder. For example authorizing the CRA Board to evaluate and make rating assignments based on the "accuracy" of a Qualified NRSRO's ratings and the "effectiveness of the methodologies used" by such

[49] Section 15E(w)(6) would require each rating to include a statement that: "This initial rating has not been evaluated, approved or certified by the Government of the United States or by a Federal Agency," while Section 15E(w)(11) would require the disclosure of a statement that the rating was made by a Qualified NRSRO selected by the (government established) CRA Board.

[50] *See* ASF Letter at note 28.

firm would conflict with Section 15E(c)(2) of the Exchange Act. This provision, which was adopted as part of the 2006 Act, prohibits the Commission from regulating either the substance of credit ratings or the procedures and methodologies by which an NRSRO determines credit ratings. DBRS submits that because the CRA Board's assessment of a Qualified NRSRO's ratings and methodologies would have such important economic consequences, those assessments could effectively regulate ratings and methodologies. Pressure to migrate to ratings methodologies favored by the CRA Board would lead to a loss of diversity of credit rating opinions, a reluctance to innovate and ultimately, to a decline in ratings quality.

Section 15E(w) would also interfere with Rule 17g-5(a)(3). This Rule, which the industry has only recently implemented at great expense,[51] is designed to address the issuer-pay conflict of interest in the structured finance ratings market. It does this by enabling non-hired NRSROs to rate structured finance products, but only where the hired NRSRO has an issuer-pay conflict.[52] Because 15E(w) purportedly eliminates that conflict, the CRA Board's assignment of a Qualified NRSRO to determine an initial rating on a structured finance product would not trigger the 17g-5(a)(3) process.

Nor does it appear that an issuer's engagement of an NRSRO to determine "additional" ratings would implicate 17g-5(a)(3). This is so because the duty to disclose information to non-hired NRSROs is tied to a hired NRSRO's determination of an "initial" credit rating, and Section 15E(w) does not construe subsequent credit ratings to be initial ratings.[53] In effect, therefore, 15E(w) would erase any benefits that could be derived from the 17g-5 program.

Section 15E(w)'s construction of the term "initial rating" also seems to conflict with certain aspects of the Commission's proposed enhancement of the rating history disclosure rule,[54] and possibly the proposed credit rating disclosure rule as well.[55]

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[51] The cost of implementing this rule has turned out to be many multiples of the amount the SEC estimated in its adopting release. *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* SEC Release No. 34-61050, 74 Fed. Reg. 63832 (Dec. 4, 2009) at notes 276, 279, 280 and accompanying text.

[52] Rule 17g-5(b)(9).

[53] Section 15E(w)(11) and (12).

[54] *See* proposed Rule 17g-7(b)(1)(ii) and 17g-7(b)(2)(v)(B).

[55] Rule 17g-7(a) defines the term "rating action" to mean a preliminary credit rating; an initial credit rating; an upgrade, downgrade, affirmation or withdrawal of an existing credit rating; or the placement

The Section 15E(w) System Could Harm the Capital Markets

The Section 15E(w) System could harm the capital markets in a number of ways. First, it could delay or destroy particular structured finance transactions if the CRA Board encountered difficulty in selecting Qualified NRSROs willing and able to rate such transactions or if the firms selected did not satisfy investors' investment guidelines or contractual obligations. Being deprived of any input into the selection of an NRSRO to determine the initial rating on a structured finance deal could dissuade an issuer or arranger from structuring the transaction in the first place, since the NRSRO's identity could affect the price at which investors would be willing to buy the securities or their willingness to buy the securities at all.[56]

More importantly, centralizing the power to select NRSROs for every single structured finance product subject to U.S. jurisdiction would create an enormous systemic risk. Any malfeasance, incompetence, or even good-faith mistakes on the part of the CRA Board would ripple through the entire structured finance market. Concentrating risk in this fashion is contrary to the harsh lessons of the 2008 financial crisis.

Should the Section 15E(w) System injure the market, there would be no redress. Section 15E(w) provides no remedy for NRSROs who are denied a Qualified NRSRO designation or ratings assignments due to erroneous, arbitrary or capricious Board action. Nor does it provide a remedy for issuers who suffer an economic loss due to a transaction that failed or was delayed because of negligent or malevolent conduct on the part of the Board. Investors harmed by CRA Board action or failure to act would likewise be without a remedy. The only thing provided to the users of assigned credit ratings is a disclaimer of government responsibility.

For all of these reasons, DBRS submits that the Section 15E(w) System would not be in the public interest, and it would not protect investors.

CONCLUSION

DBRS appreciates the opportunity to comment on this important study. We would be happy to supply the Commission or the staff with additional information regarding any of the matters discussed herein. Please direct any questions about these comments

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of an existing credit rating on credit watch or review. There is no provision for an "additional" or "subsequent" rating.

[56] *See* ASF Letter at 12.

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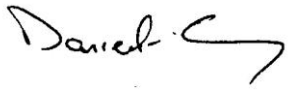
Very truly yours,



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