September 13, 2011

Submitted via E-mail to rule-comments@sec.gov

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

Dear Ms. Murphy,

The Securities Industry and Financial Markets Association (SIFMA)[1] is pleased to submit these comments regarding the Securities and Exchange Commission's ("Commission") May 16th *"Solicitation of Comment To Assist in Study on Assigned Credit Ratings"* ("Solicitation")[2]. This study is being performed pursuant to Section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act[3] ("Dodd-Frank"), and is a prelude to a very important rulemaking the Commission must undertake in 2012 related to the assignment of credit ratings to structured finance products. It is therefore of crucial importance that the Commission gather as much information as possible, so as to be able to perform a sound and robust analysis of the costs and benefits of the approach prescribed in section 939F of Dodd-Frank, the so-called "Section 15E(w) System", and the various alternatives to that approach. We strongly support the Commission's efforts in this regard and believe the Solicitation is an important first step toward the promulgation of effective rules to implement Section 939F, and hope this letter provides useful information and feedback.

1. Existing Regulation of Conflicts of Interest

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

[2] 76 Federal Register 94 (16 May 2011), pp. 28265-28297
[3] Pub.L. 111-203

SIFMA recognizes the potential conflicts of interest that arise from the current issuer-pays model of credit ratings. It is critically important to recognize that the mere presence of a *potential* conflict of interest does not mean that there is, or will be, an *actual* conflict of interest that harms one party to the benefit of another. It is also essential to recognize that each model of the credit ratings market presented, including the one envisioned in section 15E(w), carries with it its own potential conflicts of interests, misaligned incentives, and market distortions. Therefore, the key to improving the credit ratings process is the management of conflicts of interest; for as long as the credit rating agencies and other participants in a securitization transaction each have an individual profit motive, there will always be potential for conflicts of interest. The Commission has made significant efforts in recent years with respect to the regulation of credit rating agencies generally, and management of conflicts of interest specifically, which we commend. For example, the Commission has promulgated numerous rules, including:[4]

- Rule 17g-2 requires NRSROs to disclose ratings histories so that investors and the public may consider and compare the performance of an NRSRO's credit ratings, with an accelerated disclosure timeframe for issuer-paid ratings; [5]
- Rule 17g-5 specifically addresses conflicts of interest. [6] This rule mandates the disclosure of such conflicts, and the maintenance and enforcement of policies and procedures to address those conflicts. As described in more detail below, Rule 17g-5 requires that issuers make available to all NRSRO's the information it gives to a hired NRSRO. The availability of this information allows non-hired NRSROs to review the information and provide unsolicited ratings as they see fit. 17g-5 also prohibits certain conflicts of interest entirely, including that NRSROs may not make recommendations about the legal structure, assets, or liabilities of the issuer or security. The potential for unsolicited ratings provides a check on a hired NRSRO's incentive to allow a conflict of interest to affect the quality of their rating;
- Rule 17g-6 prohibits rating agencies from issuing ratings (or taking ratings actions) that are not determined in accordance with its written policies and procedures;[7]

---

[4] E.g., Securities and Exchange Act of 1934 Rules 17g-1 through 17g-7. See also the testimony of John Ramsay, Deputy Director, Division of Trading and Markets, before the Before the Subcommittee on Oversight and Investigations of the United States House of Representatives, Committee on Financial Services (July 27, 2011), available here: http://www.sec.gov/news/testimony/2011/ts072711jr.htm

[5] 17 CFR 240.17g-2

[6] 17 CFR 240.17g-5

[7] 17 CFR 240.17g-6

- Rule 17g-7 requires NRSROs to provide in any report accompanying a rating a description of the representations and warranties in the transaction documents and the enforcement mechanisms provided to investors, as well as a comparison to these items in similar transactions.[8] This rule makes it easier for investors to understand their rights and remedies, and further reduces potential information asymmetries among issuers, investors, and rating agencies. To the extent that a rating agency's review was compromised by a conflict of interest in terms of accepting a set of representations and warranties weaker than what would be expected for a similar transaction or weaker than what the rating agency uses as a benchmark in its ratings criteria, Rule 17g-7 would allow users to know this;
- Other provisions such as Sections 933 and 939G of the Dodd-Frank Act were enacted to increase the liability of NRSROs, and serve to mitigate conflicts of interest by creating greater incentives to provide accurate ratings and to not allow conflicts to influence the determination of ratings;
- Section 939A of Dodd-Frank requires regulators to review their usage of credit ratings in regulations, and to remove them after this review. The goal of this provision is to reduce the reliance by markets on credit ratings, thereby reducing their value, and indirectly mitigating the degree of conflicts of interest that may be present.

In accordance with Rule 17g-5, NRSRO's have developed policies and procedures to address conflicts of interest as well as broader codes of conduct.[9] Some NRSROs have also instituted analyst rotation schemes, whereby a given analyst may only rate an issuer for a limited period of time.[10] We do not highlight the Commission's rules or NRSRO actions to make a point that conflicts of interest in the issuer pays model have been eliminated. Indeed we believe that is impossible. However, as we mention above, it is impossible to eliminate conflicts of interest in any credit

---

[8] 17 CFR 240.17g-6

[9] See various Form NRSRO filings as well as, e.g.: Moody's http://www.moodys.com/uploadpage/Mco%20Documents/Documents_professional_conduct.pdf; Fitch: http://www.fitchratings.com/jsp/creditdesk/CodeOfConduct.faces?context=3&detail=1; Standard and Poor's: http://www.standardandpoors.com/ratings/form-nrsro/en/us.

[10] Standard and Poor's Analyst Rotation Policy: http://www.standardandpoors.com/servlet/BlobServer?blobheadername3=MDT-Type&blobcol=urldata&blobtable=MungoBlobs&blobheadervalue2=inline%3B+filename%3D7_009_Analyst_Rotation_09_07_2010.pdf&blobheadername2=Content-Disposition&blobheadervalue1=application%2Fpdf&blobkey=id&blobheadername1=content-type&blobwhere=1243760503308&blobheadervalue3=UTF-8

ratings issuance or compensation model. There will always be conflicts, and there will always be a need for the management of them.

In addition to new regulations in the United States, we also note that IOSCO has promulgated a code of conduct for rating agencies, which includes measures to ensure the quality and integrity of the ratings process.[11] We understand most if not all of the NRSRO's follow this policy. The presence of IOSCO in this space highlights another key issue that the Commission should consider: the global applicability, and implications, of the Commission's actions. European regulators are in the midst of revising and refining their regulation of the credit ratings process. It is important that regulators here in the U.S. and those in Europe coordinate their policies in a manner that does not create duplicative requirements, conditions that are impossible for a party on one continent or another to comply with, or opportunities for regulatory arbitrage.

In question thirteen, the Commission requests comment on the benefits of the issuer pays system. We believe this is an important yet often overlooked question, and we will address the issue briefly by highlighting a few key points. The issuer pays system allows for the broad dissemination of credit ratings, as the issuer funds the activities of the rating agency and the agency need not charge users of the ratings. We expect that user-pays ratings would be less available to investors who do not subscribe in a timely manner, if at all. The Commission also asks about incentives for accurate ratings. SIFMA believes that under the current system there are incentives to produce an accurate rating. For example, if ratings from an agency turn out to be incorrect, investors are likely to give less weight to the ratings of that agency in the future, potentially including a refusal to invest in the transactions rated solely by that poorly performing agency. This then provides incentives to issuers to use different rating agencies. We also note that the increased liability faced by NRSROs creates incentives to produce accurate ratings. This is a market-driven incentive – as strong supporters of open and free markets, SIFMA believes this is a critical point. We also note that the existence of the issuer pays system does not eliminate the possibility of an alternative regime developing, should the market desire an alternative regime. In other words, the issuer pay model is not anti-competitive in and of itself.

The Commission has set forth a model through existing Rule 17g-5 that provides open access to transaction information and allows any interested NRSRO to develop its own view on a

[11] http://www.iosco.org/library/pubdocs/pdf/IOSCOPD180.pdf

particular transaction. This model also allows the development of alternative compensation models, such as an investor-pay model, if market participants so desire. SIFMA believes the 17g-5 model is superior to the alternatives presented because 17g-5 allows market forces to operate and determine the future regime that best fits their needs. As explained more fully below, SIFMA believes that the Commission should move forward with respect to section 939F of Dodd-Frank with a continuation of the Rule 17g-5 regime. SIFMA believes that the Commission should determine that the 17g-5 approach better serves the public interest and the protection of investors

In this letter we first address the 15E(w) System, then briefly address each of the alternatives presented by the Commission, concluding with a discussion of Rule 17g-5.

2. <u>The 15E(w) Approach</u>

Section 939F(d)(1) of Dodd-Frank prescribes a mechanism whereby the Commission must *"by rule, as it determines is necessary or appropriate in the public interest or for the protection of investors, establish a system for the assignment of nationally recognized statistical rating organizations to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured finance product from selecting the nationally recognized statistical rating organization that will determine the initial credit ratings and monitor such credit ratings."* To the extent the Commission's study does not provide a superior approach, the Commission is instructed to implement a regime that was found in the Senate's version of the Dodd-Frank Act (the "15E(w) System"), but which was removed from the final version of the Dodd-Frank Act before passage and replace with Section 939F. The 15E(w) System would involve the creation of a Credit Rating Agency Board ("Board"), that would, among other things, determine qualification standards for NRSRO's deemed eligible to provide an initial rating for a class of securitizations, take applications from securitization issuers who desired credit ratings, assign NRSROs to transactions for which they would provide an initial rating, levy fees on NRSROs, at least annually evaluate the performance of NRSROs, require an issuer to request a revised credit rating, and limit the allowable fees charged by an NRSRO to perform an initial rating.

Broadly, SIFMA members express great concern about this approach. The concerns are multidimensional, come from issuer, underwriter, and investor members, and are deeply held. At the highest level, the implementation of the 15E(w) System would represent an unprecedented

intrusion of government control into a private financial market. First, the Board would be the arbiter of who was eligible to participate in the market. Given the SEC's current regulation of NRSRO rules, this is not entirely new. However, the Board would also be in the position of directing business to one firm versus another, based on the Board's opinion of the firm's "performance". Not only that, but the Board would also have the power to determine what is a "reasonable" fee. We believe the Board would not be a passive participant. We do not believe this is possible, given its responsibilities, nor was this its intended role. We note the remarks of Senator Franken, sponsor of the original amendment to the Senate legislation, who proclaimed his intention that the Board take an active role: *"By allowing a board to assign more work to credit raters producing accurate ratings and assign less work to those producing inaccurate ratings, the market will finally reward accuracy and no longer reward ratings inflation*."[12]

The Board will set the rules of the game, determine who is allowed to play, and decide how much the players are paid. SIFMA struggles and fails to find an analog to this anywhere in the United States' capitalist economy. The Board would direct and centrally control the market for initial credit ratings on structured finance products. This would represent a sea change in the United States government's relationship to financial markets, and business in general, representing a movement away from free markets and towards centralized command and control of the economy. SIFMA members do not believe these are appropriate roles for the government in private-market financial transactions.

Furthermore, this type of government involvement in the business of credit ratings would run directly contrary to the direction compelled by other provisions of Dodd-Frank, such as Section 939A, which calls for federal agencies to review their rules and remove references to credit ratings. In the last year, federal agencies including the SEC have put forth at least sixteen rulemakings that either propose to, or do, remove references to credit ratings from various rules.[13] If Section 15E(w) were implemented, not only would the role of credit ratings be deeply enshrined in government policy for the foreseeable future (if not forever), it would also create an impression that the government encouraged and supported the usage of credit ratings, and potentially approved of the ratings themselves, regardless of any disclaimer placed in the transaction documentation.[14] This would happen because the Board would be reviewing performance and making a determination as

[12] Al Franken (MN), Congressional Record 156:69 (May 10, 2010), p. s3465
[13] Source: Davis Polk compilation of rulemaking data available on the Davis Polk Regulatory Tracker™
[14] Solicitation at 28290

to who gives the most accurate ratings, and this would imply that the Board indeed approved of the performance, and by implication approved of the ratings. We note as a case study the implicit backing for Fannie Mae and Freddie Mac, which resulted in an assumption by investors that the government stood behind the obligations of those entities regardless of the fact that their transaction documentation specifically indicated that the obligations were obligations only of the entities themselves. In that case, the government ultimately did stand behind the entities and their securities. This perception of implicit approval or support has reputational implications for the Board and the government both domestically and internationally given the global nature of the securitization business. Would the reputational risk of the Board being wrong on a particular topic cause actions that were not rational, harmful, or otherwise distorted markets? We do not know, but the risk would be present.

Given that the Board would set performance standards and allocate business based on achievement of those standards, it would also put the Board in a position very close to regulating the form and content of credit rating methodologies, which we do not believe is appropriate – it is important that rating agencies are able to independently develop methodologies and analysis techniques which they believe will produce the most accurate ratings without undue pressure from issuers, investors, or policymakers.[15].

We also note that the 15E(w) approach presents its own set of conflicts of interest. These conflicts may be managed, just as any other conflicts in any other credit rating model may be managed. For example, participants on the Board would be drawn from the various industries involved in structured finance, including investors, issuers, and credit rating agencies. This regime could create incentives for rating agencies to lobby, or attempt to curry favor of particular Board members in order to obtain increased business. Board members could also have personal interests in firms subject to the authority of the Board. These conflicts of interest would not necessarily be fatal to the operation of the Board, as they presumably would be managed through policies and procedures, just as the conflicts presented in the issuer pays model are addressed by policies and procedures.

Outside of these financial conflicts of interest, the Board would also be subject to political pressure, and could take actions to satisfy those pressures that distort securitization markets. For

[15] At a high level we do believe it is appropriate to regulate the consistency of the application of methodologies, etc, as the Commission does in rule 17g-6.

example, suppose a particular rating agency had a very negative view on the economic prospects of a particular region which would cause the rating agency to demand greater enhancement for transactions which included significant amounts of loans to borrowers in this area. This would have an impact on the funding costs of a lender to borrowers in that area, may cause lenders to avoid the area, and either way would have an impact on the borrowers. This could create an incentive for persons who are sensitive to the concerns of those borrowers to impress political forces upon that rating agency, through the allocation, or lack of allocation, of ratings business by the Board (or implicit or explicit threats of such action). As a real world example, the recent downgrade of the long-term credit rating of the United States by one NRSRO could have produced calls for that NRSRO to not benefit from the 15E(w) system, on a purely political basis.[16] Currently, political forces primarily have at their disposal only their powers of moral suasion; 15E(w) would provide a direct mechanism with which the rating agencies might be inappropriately "kept in line". Regardless of how one constructs a regime for credit ratings, there will always be potential conflicts of interest; implementation of the Section 15E(w) approach is not a silver bullet in addressing these and, in fact, we believe raises more serious concerns than the current ratings process.

SIFMA members are also concerned about the quality of the expertise of the Board and its staff. It is unclear if this Board would be composed of full time or part time employees. Presumably lower level staff would be full-time, but the Solicitation does not discuss the nature of the employment of Board members themselves. The compensation of these Board members and their staff is also unclear. These factors will relate directly to the quality of employee the Board would be able to attract and retain, both as a Board member and as staff of the Board. This concern is also heightened by the current budgetary and spending environment in Washington D.C., both specifically with respect to the budget of the SEC (and other regulators) and more generally with the potential for broader fiscal contraction. Would the Board be funded at the level required for its optimal operation?

SIFMA members acknowledge the failings of NRSROs and other securitization market participants in the boom and bust of the mid-2000s.[17] However, it is unclear to SIFMA how a

[16] We do not comment on the merits or lack thereof of this ratings action, it is merely an example of a politically sensitive issue.

[17] We note that the report of the Senate Permanent Subcommittee on Investigations issued a thorough report on its views on the various contributors to the recent crisis and devoted a significant portion of that report identifying flaws of the credit ratings process. While the issuer pays model was mentioned, the specific flaws that raised concern were not flaws that would be unique to the issuer pays model. As we discuss in this comment letter, the profit motive will always create

government panel could be expected to perform better. The Board would face a daunting task. In 2010's release on Asset-Backed Securities, the Commission notes that on average, from 2004-2009, 1674 registered and 144A securitization transactions were executed each year.[18] This could mean that approximately six to seven transactions could require an initial rating each business day.[19] Unless the 15E(w) system were totally automated which would not appear to be consistent with the intent that 15E(w) be managed in an active manner, we believe that this alone would be a significant burden upon the Board and its staff, and would require that the Board be staffed quite extensively. Furthermore, the above only addresses the assignment of initial ratings, not the other tasks enumerated by 15E(w), such as rulemaking, fee setting, compliance reviews, performance reviews, and other administrative tasks.

On a more granular level, SIFMA is concerned that the Board will be required to do tasks it simply will not have the expertise to perform. For example, will the staff of the Board be able to fully understand, compare and contrast the merits of one agency's MBS criteria (from originator and servicer reviews through to structural analysis of securitizations and the surveillance methodology that follows) and modeling versus another rating agency's criteria and modeling? This would seem to be required to perform an effective review of performance. Now, would they be able to do this for six other competitors, at the same time? This would seem to be required to evaluate qualifications on a relative basis. Each of these tasks would need to be done with attention to detail, appropriate analytical support, and knowledge and expertise. We question whether this would be achieved, as there is a limited supply of professionals with these skills. It is not simply a matter of hiring a small number of qualified personnel. We believe that the task faced by the Board would require a significantly large number of personnel.

The Board will be performing performance reviews on all rating agencies, which is no small task given the number of structured finance ratings issued or surveyed in a given year. Combining the enormity of this task with the concerns we note elsewhere regarding budgets, compensation

---

a conflict of interest. The report also acknowledges the role played by regulatory ratings requirements, investment guideline requirements, and other issues not connected to the compensation model, and does not recommend a wholesale shift away from the issuer pays model. See U.S. Senate Permanent Subcommittee on Investigations, "*Wall Street and the Financial Crisis: Anatomy of a Financial Collapse, Majority and Minority Staff Report*" (April 13, 2011) pp 243-318.

[18] In the Asset-Backed Securities release, the Commission noted an annual average of 716 private offerings of ABS pursuant to Rule 144A and 958 registered offerings. 75 Federal Register 84 (May 3, 2010), p23407.

[19] 1674 deals divided by 260 working days per year (5 working days/wk * 52 weeks = 260 working days), not counting holidays or vacation time, equals 6.44 transactions per day. This assumes all of these transactions would require at least one rating, which may or may not be the case. It is also impossible to know how the implementation of 15E(w) would change demand for credit ratings.

and staffing, SIFMA believes this Board faces a very difficult, if not impossible task. In essence, the Board will be a rating agency itself. To this we highlight the fact that rating agency stuff must consider a broad range of issues, alternately analytical, conceptual, and legal, when calibrating models and determining credit ratings criteria, and apply that wide variety of factors to specific transactions when producing ratings. This includes but is not limited to: knowledge of a broad array of asset classes; the wide structural variety of securitization design; a wide variety of underlying assets; appreciation for the macro asset environment (e.g. the housing market or auto purchase market); issuer strength, transaction counterparty qualifications (e.g., servicer ratings); the value or weaknesses in specific representation and warranty provisions, compliance with applicable law. Rating agencies are staffed by employees with a broad range of experience and expertise. SIFMA is concerned that the Board would not be able to attract appropriately qualified staff with the capability to handle these tasks.

On a more practical level, the 15E(w) approach has other material flaws. 15E(w) presumes that *any* issuer would be able to obtain a rating from *any* qualified NRSRO. In reality, this is not always possible. When an issuer desires a rating for a transaction, the first step in the process is to approach a rating agency and discuss and agree on the terms of the engagement, in a formal, documented manner through a signed engagement letter. These letters detail the relevant terms of the transaction, including what information the rating agency will require, when it will require it, costs, and importantly, the distribution of liability. The terms of these letters are negotiated, and at times, issuers and NRSROs are unable to agree. In these instances, the issuer will move along and approach another rating agency, agree on business terms, and have them rate the deal. It is important to note that *this is not ratings shopping*, as these discussions do not relate to the material terms of the rating itself, rather, they are a business agreement between the issuer and the rating agency. Indeed, the personnel at the ratings agencies who perform these business negotiations are not involved with the ratings given to securities; this has been common practice and they are now required to be separated by law.[20] Given recent regulatory changes, and the active litigation environment, the negotiation of these engagements is a more time consuming process than it has been previously.

Section 15E(w) does not appear to account for these sorts of issues – it allows for a rating agency to decline an assignment, but it does not allow for an issuer to decline to be rated by a rating

[20] E.g., Dodd-Frank 932(a)(4)

agency. This may be intentional, but it ignores the reality of the markets, and will create harm to issuers, investors, and rating agencies. For example, a situation may arise where an issuer knows that it will not agree to the terms demanded by a rating agency, but that rating agency could be assigned to its deal. The rating agency, which would presumably derive a substantial proportion of its revenue through initial ratings, would have an incentive to accept the assignment and try to come to an agreement with the issuer. However, given that the issuer may have already decided that the terms put forth by this rating agency are unacceptable, based on previous experience, this would be an exercise in futility, and would simply add a cost and time burden to the process of securitization that had no benefit whatsoever. Alternatively, a rating could be assigned to an agency, and a negotiation of business terms would ensue. If the issuer and agency were unable to agree, but the agency did not agree to decline the assignment, what happens? It appears that the process of obtaining an initial rating would be at the least delayed, which would at the least delay the closing of the transaction. It is not clear that such uncertainty, conflict, and delay would accrue to the benefit of any party.

Remaining on a practical level but viewing this situation from another perspective, the fact that the Board determined that a particular rating agency was qualified to rate a transaction does not mean that the investor in that product will necessarily agree that the agency is qualified to rate the transaction. Even if the investor agrees they are technically qualified, they still may not be the desired party for a variety of reasons. There is more to a rating agency than factors that may be measured through qualification of analysts or the specification of internal processes. Factors that the market considers at least as important and possibly more important are breadth and depth of coverage and a track record.[21] Ratings methodologies differ from agency to agency, so the ratings of one cannot necessarily be directly compared to another, and investors and other market participants develop familiarity and comfort with specific methodologies over time. To the extent that a rating agency only rates a small proportion of a market, its analysis may be less valuable to investors who look to rating agencies that have a wide breadth of coverage, or may not be valuable to investors who are not familiar with their methodology. Over time, as the agency continues to rate deals, its reputation may improve (assuming performance is adequate). We have seen this in recent years as certain smaller agencies have gained market share in specific markets. However, this is an organic process, one that cannot be forced. 15E(w) would force the issue, and allocate

[21] SIFMA members acknowledge that the track record of the 2006-2008 period as regards mortgage-backed securities was less than sterling. However, other markets, such as auto ABS, did not experience the same ratings issues.

ratings assignments to agencies whether or not the investors believed their ratings were worthwhile; we do not see how that promotes the protection of the investor.

In any case, the relative weighting of these factors will vary from investor to investor. SIFMA's investor members have expressed a strong view that they would not simply accept the rating of any rating agency selected by the Board simply because it was selected by the Board. To the extent the investor desired a credit rating it is likely that the investor has specific rating agencies in mind. It may be a rating agency which that investor believes to be more skillful than others, it may be a rating agency for which the investor is a subscriber of other analytical work or surveillance data, or it may be for some other reason. Importantly, our investor members also indicate that many of the funds on behalf of whom they invest have guidelines that are often quite specific as to which and how many ratings must be obtained.

Moving to the perspective of the issuers, we note that evaluating transactions in a particular asset class requires a certain level of asset class-specific knowledge and market experience. If a rating agency were approved by the Board to rate a particular asset class, but that agency did not have significant experience rating that asset class, it would likely be very costly and inefficient for an issuer of that class of ABS to be assigned a rating agency that had minimal experience rating that kind of ABS. That issuer's deal could be delayed for an inordinate amount of time, possibly substantially mitigating or eliminating the economic drivers that incentivized the issuer to do the deal in the first place. Even if the issuer works with an inexperienced rating agency once, there is no guarantee it would not be required to do so again on the next deal, possibly causing the issuer to reconsider doing a securitization transaction at all. These concerns are more acute with esoteric asset classes or unique structures. Ratings agencies will have a financial incentive to be approved to rate as many asset classes as possible, as the 15E(w) approach can be viewed to create a somewhat guaranteed revenue stream. Just as we question the Board's ability to determine the accuracy of ratings, we question the Board's ability to determine the quality of the staff and methodologies of a rating agency.

Therefore, if the Board assigns a ratings exercise to a non-desired or non-expert rating agency, it appears likely that the issuer will still be required to go into the market and obtain an additional rating from an agency, at additional cost, that is acceptable to the investors in the transaction. This would add a significant cost burden to securitization transactions (ratings are not

cheap), and given that the initial assigned non-desired rating would not carry much value in the minds of the issuer or the investor, the 15E(w) System would provide no benefit. Ultimately, either the borrowers on the collateral that supports the securitization will bear this cost (because of a less economic execution on the securitization) or the investor would bear this cost (because the issuer could pass through added costs through decreased yield).

The monitoring of ratings performance by the Board would also appear to be challenging. It is not as simple as ranking rating agencies by the number of downgrades or upgrades. Not only can ratings be downgraded because the initial analysis was defective, but also ratings can be downgraded because of factors outside of the control of the rating agency. For example, unexpected external shocks can cause macroeconomic distress such as increased job losses. To the extent that the stress reaches beyond that which was envisioned in the modeling of the ratings, the ratings may need to be lowered, but this does not necessarily imply that the rating was determined incorrectly. Furthermore, changes to the business model of a participant in a transaction, such as the issuer of credit card ABS, or the servicer of a mortgage transaction, could have an impact on the performance of existing transactions. Again, these changes may or may not be factored in to the existing modeling of the rating agency, and ratings downgrades may or may not be the result of a defect in the agency's methodology. Ratings of securitization transactions which are linked to the corporate rating of the issuer may also change regardless of the performance of the transaction or the accuracy of the initial rating.[22]

In addition, the accuracy of ratings – and especially the accuracy of highly rated bonds - cannot be measured for a very long time, in many instances until long after the issued securities have been retired. This is because the standards for AAA rated securities are set in such a manner that the security should not incur losses even under something akin to a once-every-100-years credit event or Great Depression scenario or some other event which does not occur regularly (but is quite severe). For a more recent example, ratings agencies have revised many standards for MBS in response to the recent housing downturn. We will not know if these revisions will be adequate to protect investors in a similar event until a similar event actually happens. Thus the best the Board established by the Section 15E(w) System could do is to predict the accuracy of ratings based

---

[22] For example, the ratings of 744 structured finance transactions were placed on watch for a downgrade by Standard and Poor's on August 8, 2011, due to the downgrade of the sovereign rating of the United States. See http://www.standardandpoors.com/prot/ratings/articles/en/us/?assetID=1245316788204 .

on their performance in stress scenarios below those used to set the various enhancement requirements as opposed to determine the actual accuracy of ratings.

In any case, and in each case, the Board would need to determine for each downgrade why the rating was downgraded, and whether or not it was the result of an external factor or a defect in the rating methodology. This would be a daunting task for anyone to manage on a broad scale, much less a potentially overworked, understaffed, and underqualified Board. In some ways, such analysis might require the Board to formulate its own model for rating transactions against which it could compare the ratings given by NRSROs. Given that this review by the Board would be a part of the determination of the allocation of future business to rating agencies, it would also be a very important, with very negative consequences (potentially fatal to a rating agency) if the Board were to make a mistake. We also question whether or not this would exacerbate incentives that rating agencies may have to delay ratings actions until the latest possible time, since there may be a perception that any ratings action, warranted or not, could impact future business flow. From SIFMA's perspective, this task of monitoring ratings performance and allocating business to the agencies viewed as most accurate is best left to the market, given that the market bears the brunt of the consequences of inaccurate ratings. We also have a concern that the institution of this governmental evaluation of "accuracy" would drive rating agency focus to the satisfaction of that new standard, and would lead to greater uniformity in rating agency process and criteria, which is not the intended impact of the provision and likely not beneficial for financial markets.

The Commission also requests comment on the 15E(w) system in the context of the framework set forth by the GAO's study.[23] For reasons discussed above, SIFMA believes that the 15E(w) System severely and fatally fails the fifth (feasibility), sixth (market acceptance) and seventh (oversight) prongs of the GAO's framework. As discussed, we believe the 15E(w) System would be very difficult to put in to place, because of the challenges with respect to adequate staffing, and practical challenges with respect to analysis and performance monitoring. It fails the market acceptance prong as our members – both investors and issuers – strongly reject the proposition of a government agency Board selecting the rating agencies that will rate their transactions. And finally, it fails the seventh prong because our members simply do not believe that

[23] *Securities and Exchange Commission: Action Needed to Improve Rating Agency Registration Program and Performance Related Disclosures*, GAO Report 10–782 (September 2010), available here: http://www.gao.gov/new.items/d10782.pdf

a government agency will do a better job performing the detailed, technical analysis of securitization markets and transactions than the participants in those markets can do themselves.

In conclusion, the 15E(w) approach would not represent an improvement over the current regime but would impose significant costs and burdens on securitization markets. It would eliminate some conflicts of interest but create others, would deeply enshrine the role of credit ratings in government policy when the market and other parts of Dodd-Frank are moving in the opposite direction, and most importantly, is rejected by our investor members. While the market does not want a repeat of the experience of 2007-2008, the market also does not want a centralized, inefficient, and likely ineffective government command-and-control mechanism to allocate initial ratings on securitization transactions.

SIFMA believes the SEC should look toward alternative models which better serve the public interest and the protection of investors.

<u>3. Investor/User Funded Models</u>

The solicitation requests comment on a number of alternative models, including models which are primarily investor funded, specifically:

- *The Investor-Owned Credit Rating Agency Model* – Investors would establish and operate an NRSRO, and issuers would be required to obtain a rating from this NRSRO and another NRSRO of their choice.
- *The User-Pay Model* – In the User Pay model, issuers would not pay for credit ratings, rather, the investors (or other users) of the transaction would pay for them. Importantly, according to the Solicitation, users would be required to enter into a contract with the NRSRO and pay for the rating service of an NRSRO. Users would be defined as "any entity that included a rated security, loan, or contract as an element of its assets or liabilities as recorded in an audited financial statement."[24] Users would also include holders of long or short positions in fixed-income instruments, as well as parties that refer to a credit rating in contractual commitments or that are parties to derivative products that rely on rated

[24] Solicitation at 28277.

securities or entities. The model would rely on third-party auditors to ensure that NRSROs receive payment from users of credit ratings.

SIFMA members do not believe that either of these models can be exported on a broad scale to the entirety of securitization markets.

SIFMA members are not certain that these two investor-funded models would be viable on the scale required by the securitization markets. We note that in the distant past, ratings were primarily investor-paid, but this has changed. We do recognize that there are currently a few investor-paid ratings agencies, as well as ratings agencies that have a split business model, where certain activities are paid for by issuers, and others on a subscription basis by users. In discussions with our members, SIFMA has been unable to reach agreement that either of these models would be financially viable at the scale that would be required to rate and survey the entirety of the structured finance universe.

Furthermore, as with the 15E(w) approach, we note that these models would introduce unique conflicts of interest as they eliminated the primary issuer-paid conflict of interest. Just as issuers have incentives to obtain credit ratings at the highest level possible, investors or other users can have incentives to have credit ratings at one level or another. As noted above, many if not most investment guidelines have certain ratings requirements. Investors and users may desire that "cheap" assets receive high credit ratings so that they can be purchased and produce excellent yields for their funds. A low price can more than compensate for a decrease in performance. Investors or users could also desire that a troubled security not be downgraded for as long as is possible, so that it would not have to be sold into the market at a loss or be marked down on their books and records. We also note that investors who owned or controlled an investor-owned rating agency could have positions in, or related to, transactions that the agency would rate, introducing additional potential conflicts of interest that would need to be managed. SIFMA does not believe that these conflicts would *necessarily* shift from potential to actual, but it must be recognized that they might. User-paid models do not eliminate all conflicts of interest, just some conflicts of interest, and introduce others. This begs the question: would we really be improving upon the current model or just shifting the problem somewhere else?

Specific to the Commission's proposed user-pay model, as a practical matter, it is also unclear to SIFMA members how a user could be compelled to pay for a credit rating. Does this imply that any holder of a rated instrument is a user who is required to pay a fee? What if that user was not aware of or placed no value on the rating? Would the fee be allocated on a per diem basis? Investors may hold securities for long period of time, or they may only hold them for hours or days. Would this regime include parties who use ratings to negotiate repo haircuts? Would the fee be based on the size of a parties holdings, the size of an institution, or a flat fee? The answer to that question could have implications for smaller market participants. Presumably, failure to pay such fees as required would become an exception item during an audit of financial statements. The problem here is that there does not appear to be a means for users to avoid paying these fees, regardless of their actual usage of the rating, the value they placed on the rating or the performance of the rating. The only solution would be for investors to hold only unrated instruments, but that on its face is not a practical or realistic solution. Similar to 15E(w), the user pay approach (as described) would represent a governmental imposition of a cost upon an industry with little or no benefit.

We note that nothing in current law prevents either of these approaches from being used by market participants. We are unaware of any current (or past) efforts of investors to collectively fund and manage their own rating agencies. We are aware of a limited number of smaller user-paid rating agencies. We note that securitization transactions are generally marketed to investors with some indication of expected ratings, among much other disclosure. To the extent that expected ratings are not known by the issuer, and are only known by particular investors who have sought them out, it would make the marketing and closing of transactions challenging. We reiterate our earlier comments regarding the presence of ratings requirements in many investment guidelines here. This situation may be a partial factor in the current structure of the market for credit ratings.

In any case, SIFMA believes the SEC should look toward alternative models which better serves the public interest and the protection of investors.

4. The Stand Alone Model

The commission also proposes a model funded by transaction fees, as follows:

- *The Stand-Alone Model* – In this model, NRSRO's would be compensated through transaction fees levied not only on issuance but also upon secondary market transactions in the issued securities. The burden of the fee would be divided between the issuers, secondary market sellers, and the investors or other purchasers of the securities.

The idea behind this approach is to create a funding source that is independent from both issuers and investors. While that is a noble goal, SIFMA does not believe this approach is feasible. It is important to keep in mind that trading of securitization products is less robust than trading of, for example, equities. The liquidity of secondary markets for securitization products, outside of Agency MBS (which are not rated), is quite thin relative to that for Treasuries or Agency MBS or broadly held equities. Therefore, the revenue generated from secondary market trading is likely to be quite low (unless the per-transaction fee is very high). This would imply that the fee at issuance would have to be quite steep relative to the transactional fee. Of course, the fee at issuance would presumably be paid for primarily by the issuer. Costs of this fee *could* be allocated to initial investors, but it is important to keep in mind that each dollar of cost allocated to an investor represents a reduction in their yield on that security, which cumulatively makes the security less attractive to them. If the issuance fee burden on investors was too high, they might look elsewhere for investments, or it might create a situation where their price demands will not align with the needs of issuers, and securitization issuance would be constrained. This would appear to be a very complex system to put in place, and we note that it would essentially implement a transaction tax solely on securitized products. This potential cost must be weighed against the benefits in terms of incentive effects and conflicts of interest; but if the issuance fee were proportionally the largest fee, and if that fee were primarily paid by issuers, then how different is this model from the current issuer-pays model? This approach presents potentially significant costs, against potentially no benefit.

SIFMA members believe that the uncertain revenue stream created by this model would complicate the ability of rating agencies to expend the resources to rate and survey significant numbers of transactions. SIFMA members also share concerns regarding the number of rating agencies such a model could support – in other words, this model could consolidate the rating industry and reduce competitiveness. The bottom line is that it is unclear that the Stand Alone model is a viable business model.

For the foregoing reasons, SIFMA does not believe the Stand Alone model is an appropriate approach to rating securitization products, and that the SEC should look toward alternative regimes for credit ratings regulation. This approach does not better serve the public interest and the protection of investors than existing regulation.

5. The Designation Model

The Commission also presents an alternative model that would require that payments for ratings be made to an administrator:

- *The Designation Model* – A new securitization would be eligible to be rated by all NRSROs, issuers would provide information to all interested NRSROs, and the issuer would pay a third party administrator, who would allocated those fund to NRSROs based on the direction of investors in the transaction.

For reasons similar to those set forth above, SIFMA does not believe that the Designation model is viable on the large scale needed to support securitization markets. The main concerns SIFMA sees with this approach relate to the uncertain revenue streams it would create. Under this model, a rating agency would have to rate a transaction without guarantee of payment (of any kind). The agency might receive its full customary fee, or it might receive part of it, or it might receive nothing. Similarly, the agency would be expected to survey a rating without a guarantee of compensation for that work. Not only it is unclear how rating agencies would be able to operate broadly focused businesses on these uncertain terms, but also whether rating agencies would continue to rate asset-backed securities at all.

The designation model would also create incentives for rating agencies to curry the favor of particular investors in transactions; in this way it would turn the issuer-pays conflict on its head. On a practical level, to the extent that a large number of rating agencies desired to rate a deal, the numerous questions they may have could present a significant burden to an issuer. A ratings process involves communications between issuers and rating agencies; beyond some level these may become unmanageable. Finally, similar to our views on the Stand Alone model above, SIFMA members are concerned that this approach could lead to the shrinkage of the credit rating industry.

SIFMA does not believe the designation approach is a viable alternative, nor does it improve upon the protection of investors or the public interest. Because of this, SIFMA believes the SEC should look toward an alternative means of regulating the credit rating industry.

6. Rule 17g-5

The Commission also proposes as an alternative the approach embodied by its existing Rule 17g-5. Under Rule 17g-5, the Commission created a regime whereby all information communicated from an issuer to an NRSRO hired to rate a transaction is simultaneously made available to all other interested NRSROs, through its publication on a website accessible by those NRSROs.

Rule 17g-5 co-exists with the issuer-paid model for credit ratings. The primary potential conflict of interest in the issuer-paid model is the conflict between the issuer's desire to obtain as high a credit rating as possible and the rating agency's desire to obtain business. SIFMA members believe that Rule 17g-5 effectively helps to address this conflict,[25] in that to the extent a rating agency compromises its standards to obtain the business of the issuer, that compromise will be evident to other rating agencies. This is because other rating agencies will be able to review the data and information that supported the conclusion of the hired rating agency, and publish their own rating analysis. In this way, Rule 17g-5 creates a mechanism for the identification of instances where conflicts of interest impacted a security rating, and also can create an incentive effect due to the knowledge of the hired NRSRO that someone might be checking their work. As discussed previously, SIFMA members believe that conflicts of interest will be present when any party to the process has a financial or political motivation regardless of the compensation or other structure, and we believe that someone will always have a financial or political motivation. Conflicts will always be present. Rule 17g-5 creates a regime whereby investors are free to either accept the rating of a given agency, or, if they do not believe the rating is accurate or is otherwise conflicted, are free to seek out an additional opinion from another NRSRO who is able to access the underlying

[25] Rule 17G-5 is a part of the large and growing body of regulation of credit rating agencies and the credit ratings process that the Commission has promulgated since 2007.

data and information. This choice is what will protect investors and protect the market; not artificial government overlays that serve to limit issuer and investor choice.[26]

Rule 17g-5, importantly, is a flexible approach that allows for alternative ratings models to develop naturally. For example, Rule 17g-5 would allow for an investor-paid approach to develop, as it would make available to the investor-paid rating agency information required to perform a rating. It would also allow an investor-owned agency to rate securitization transactions for which it was not hired. Rule 17g-5 intelligently harnesses market forces in its favor – if the market demands any of these alternative markets to develop, Rule 17g-5 will not only allow it to happen, it will provide the information that is required for it to happen.

SIFMA believes that the Rule 17g-5 system fulfills the framework laid out by the GAO:

- As regards pillar one, *independence*, SIFMA has discussed at length in this letter the fact that conflicts of interest will be present in any model of compensation, and regulation will be needed to ensure that those conflicts are sufficiently mitigated. Rule 17g-5 also allows for independent, unsolicited ratings which are not subject to the usual issuer-pays conflicts of interest.
- As regards pillar two, *accountability*, SIFMA believes that the Rule 17g-5 approach leaves rating agencies accountable in the market for any poor performance of their ratings. Data used by the hired NRSRO is available for use by non-hired NRSROs in order for a user to commission a verification of an initial rating, or as an opportunity for a non-hired NRSRO to independently perform a rating on a deal and potentially come to a different conclusion than the hired NRSRO. Market participants can choose to use other rating agencies, or not to use ratings at all. In any case, to the extent rating agencies do not suffer losses of business some might expect or desire, it is not because of the compensation model, rather it is because specific ratings may be required in investment guidelines or regulations or otherwise. Whether or not those ratings are issuer paid, user paid, or paid by some other means, this issue will still be present.

---

[26] Outside of these benefits, Rule 17g-5 can also help non-hired rating agencies to expand their expertise by making more transaction information available to them for use in rating exercises (i.e., practice), to the extent they wish to gain experience with a new asset class.

- As regards pillar three, *competition*, we believe Rule 17g-5 significantly promotes competition by allowing any NRSRO access to the information required to rate a transaction. Indeed, Rule 17g-5 could facilitate the creation of a user-paid, or an investor-owned NRSRO by providing it with the information it needs to rate transactions. Therefore Rule 17g-5 promotes competition among NRSROs and would serve to promote competition among rating agency business models more broadly (if the market desired such alternative models).
- As regards pillar four, *transparency*, SIFMA believes that Rule 17g-5 significantly promotes transparency by making the information upon which ratings are based available to all NRSROs. Given that 17g-5 exists alongside the issuer-pays model, it also promotes the broad dissemination of credit ratings and analysis as well. We note that a user-pay model would likely result in significantly reduced access to ratings and analysis, as they would likely be restricted to paying subscribers. This is also reflected in the Commission's rule 17g-2 where, ostensibly to protect the business models of user-paid ratings agencies, user-paid agencies have certain disclosure requirements regarding ratings actions significantly delayed compared to issuer-paid agencies.[27]
- As regards pillar five, *feasibility*, while it was certainly challenging for issuers and NRSRO's to implement the Rule 17g-5 system, and there were specific issues addressed by the Commission regarding foreign issuers, Rule 17g-5 was implemented successfully and is currently operational.
- As regards pillar six, *market acceptance and choice*, Rule 17g-5 has been accepted by the market. Market participants accept the ratings produced under this system (to differing extents by differing participants, as is appropriate, and as would be the case under any regime). The Rule 17g-5 approach also provides choice – as noted, Rule 17g-5 would facilitate the creation of a ratings agency based on an alternative model of compensation. Further, Rule 17g-5 allows investors the choice to commission a rating from an NRSRO they trust, if they are not satisfied with the initially provided ratings.

Rule 17g-5 fulfills each of the criteria set forth by GAO and judged by those criteria is shown to be superior to the other regimes proposed in the Solicitation; but this is not to say that Rule 17g-

[27] 240.17g-2(d)(3)(i)(B) compared to 240.17g-2(d)(3)(i)(C)

5 could not be improved.[28] SIFMA encourages the Commission to continue to refine this rule, and looks forward to providing input on future proposals of the Commission. One specific consideration SIFMA would like to put forth is the potential for replacement or removal of the requirement that NRSRO's rate at least 10% of the deals they review on issuer 17g-5 websites. We believe this requirement has presented a significant deterrent to NRSROs utilizing the websites at all, as all ratings carry a cost and liability burden and it may be challenging to monitor visits to these websites across an organization with thousands of employees. All of these factors reduce NRSRO incentives to utilize the information that is available to them.

The Commission should consider removing this requirement or replacing it with an alternative standard which does not mandate the issuance of ratings. To the extent that the Commission desires to retain a requirement that NRSROs who access 17g-5 websites use that information to provide opinions on some portion of the transactions for which they access information, SIFMA members have discussed a change to the current rule which would remove the requirement that unsolicited ratings be issued, and replace it with a requirement that either unsolicited ratings or unsolicited commentary (such as that referred to on the previous page) be issued. Presumably this would relive NRSROs from some of the cost and liability burden of issuance of formal ratings (such as the cost of surveillance, and liability associated with that). However, SIFMA members believe that such a change must not reduce the liability of NRSROs to the extent that the incentives to produce accurate commentary are materially different from the incentives to produce accurate ratings. NRSROs should perform similar levels of research and diligence to produce commentary as they do ratings. Presumably market forces would operate over time to discount the views of NRSROs that produced commentary that was less accurate. SIFMA members believe that the Commission should consider this issue carefully, and look forward to working with the Commission to develop effective measures in this regard. Additionally, the Commission should consider relaxing the 10% requirement to a less burdensome level such as 5%. SIFMA believes such changes would increase the accessibility of the Rule 17g-5 information to non-

---

[28] SIFMA also notes that Rule 17g-5 had a June 1, 2010 compliance date. As the Commission is well aware, activity in most securitization markets remains significantly depressed compared to pre-recession levels, and it may be somewhat premature to draw final conclusion as to the effectiveness of Rule 17g-5 in promoting unsolicited ratings. That being said, SIFMA believes that Rule 17g-5 creates an environment, subject to the considerations we note regarding potential revisions to the rule, where information is made available for NRSROs to do with it as they will. Of the two recent new-issue RMBS transactions, each was subject to unsolicited public commentary by an NRSRO. (See Standard and Poor's April 28, 2010 commentary on Sequoia Mortgage Trust 2010-H1 here: http://online.wsj.com/public/resources/documents/SandPonRedwood.pdf; and Moody's February 17, 2011 commentary on Sequoia Mortgage Trust 2011-1 here: http://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBS_SF236971).

hired NRSROs, increase their willingness to use the information, and lead to the increased issuance of unsolicited ratings and/or commentary.

Apart from changes to Rule 17g-5, there may be other aspects of the regulation of credit rating agencies where the Commission could explore changes to current rules, including creating mechanisms that defer payment of a portion of an initial rating fee over the life of a transaction, or other measures that help to ensure that a rating agency has "skin in the game" along with other securitization transaction participants. The definition and implementation of such changes would be challenging, and would require significant consideration and planning. SIFMA members also believe that the Commission may wish to consider mandating disclosures by issuers regarding the identities of rating agencies that were initially contracted to rate a transaction, but ultimately not selected to provide a rating for a transaction. A principle that should guide any changes to the current regulatory structure is that regulation should encourage and guide market forces to operate freely yet responsibly. SIFMA would be pleased to discuss the structure of the credit ratings industry, and potential changes to it, with the Commission.

SIFMA supports Rule 17g-5 as a superior alternative to the 15E(w) approach to implement the mandate of Dodd-Frank Section 939F, because this approach better serves the public interest and the protection of investors.[29]

7. Conclusion

SIFMA members believe it is telling that at this point, given all of the tumult of the last four years, that the market has not demanded the sorts of core changes to the compensation of rating agencies that is discussed in the Solicitation. We do not take this lack of demand for contentment with the performance of the last few years. Market participants are very disappointed with the performance of ratings, with the performance of securitization transactions, and the performance of underlying securitization collateral more generally. Market participant have many concerns related to ratings and otherwise. Our members do not see an alternative that is both superior to the current approach, and that is worth the potentially quite significant costs and risks of a transition to a fundamentally different compensation model. As discussed, each alternative model discussed in

[29] To the extent that the SEC decides to move forward with an approach other than the 17g-5 based approach, SIFMA believes that the Commission should consider whether the current set of NRSRO rules continue to be relevant, and eliminate those rules made irrelevant by changes to the model under which credit ratings are issued.

the Solicitation carries with it its own conflicts and its own flaws. For various reasons, SIFMA believes that each of the alternative models, including 15E(w), is fatally flawed. For this reason, SIFMA supports the Rule 17g-5 alternative.

It is important to keep in mind that credit ratings are not an area where a complete business model failure is acceptable. For better or worse, credit ratings continue to be viewed by the market to have worth, in some cases as a primary or secondary third-party evaluation of credit risk, in some cases as a signaling or gating device, and in some cases as guideposts in a vast and technical market. Rating requirements are still present in various investment guidelines and internal policies and procedures. Market participants who placed sole reliance on ratings learned a harsh lesson, but that does not mean that ratings will be totally discounted. Credit rating agencies remain critical third party risk evaluators for securitization markets, when factors including skill, modeling capabilities and experience are combined with market coverage and sheer manpower.

To the extent that an alternative business model is imposed upon this market and it is not supported by the market, leads to a contraction in the number of rating agencies, or simply fails because it is not viable, securitization markets would likely be irreparably damaged. SIFMA is a strong believer that markets should be free, and that regulation should be a tool to keep behavior in those markets within acceptable bounds. SIFMA members believe that the 15E(w) approach would represent an unprecedented exercise in government control, in terms of picking winners and setting prices, and would not gain broad acceptance within securitization markets. Indeed we think it would harm issuers, investors, and consumers of financial products funded by securitization. SIFMA members also believe that many of the alternatives presented by the Commission in the Solicitation carry with them severe flaws which call into question their viability, or merely shift one perceived conflict of interest somewhere else. In the end, the costs of a transition to those models would not be appropriately balanced by the benefits. SIFMA believes the Commission should employ 17g-5 as the means to satisfy the requirements of Dodd-Frank Section 939F. SIFMA members believe that Rule 17g-5 is superior to the alternative approaches for the reasons discussed herein, and would best serve the public interest and the protection of investors.

We would be pleased to provide further comments or additional information. Please do not hesitate to contact Chris Killian on our staff at ckillian@sifma.org or 212-313-1126 with questions or comments.

Sincerely yours,

Richard A. Dorfman
Managing Director
Head of Securitization

Christopher B. Killian
Vice President, Securitization Group