June 3, 2013

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

Re: Credit Ratings Roundtable (File Number 4-661)

Dear Ms. Murphy,

I am the former Executive Managing Director of Global Structured Finance at Standard & Poor's. I ran this department from August 2008 until December 2011. I have been working in the fixed income markets since 1980 at Morgan Stanley, JP Morgan and Nomura Securities as an analyst, a trader, a head of research, and as a structurer. I worked for Moody's Investors Service in 1983 where I was one of the 4 analysts responsible for the evaluation and ultimate downgrading of the AAA-rated Bell Telephone Operating companies—the largest downgrade of AAA-rated corporate debt in history. The pressures and conflicts that I saw and felt then as an analyst, remain today 30 years later.

In my career I have had the opportunity to work closely with many investors, and to interact with the credit rating agencies and regulators. I was hired by S&P at a time of great turmoil for the markets and for S&P, as the effects of the financial collapse led by the US structured finance market were impacting financial institutions all over the world. I joined S&P from retirement with the hope and intention of trying to help salvage the best elements of the structured finance markets.

I was and remain a strong advocate for securitization. However, somewhere along the way, bad practices began to rot the foundation of this innovative market. One of these practices was how issuers and Wall Street pressured and manipulated the credit rating agencies (CRAs) to obtain higher credit ratings, and how the CRAs allowed this to happen to maintain or grow their market share. Because of the prominence and special status of credit ratings granted by regulation and the outsourcing of risk measurement by investment managers as shown by their over-reliance on credit ratings, the problems arising from this bad behavior were magnified and created great systemic risk. Rating shopping and criteria catering led to a downward spiral of credit risk miss-estimation by the CRAs.

There are many good analysts at the CRAs and other organizations who work hard at providing useful analysis. I have been personally published and managed fixed income research for over 30 years, and strongly believe that it can provide value for investors. However, the reality is that the analysts do not set the policies of their firms. The management sets the policies, goals, and corporate culture. Management serves its firm's shareholders, who look to maximize profit. There is nothing wrong with this. However, invariably there is potential for a conflict of interest. Different frameworks and models create greater or lesser potential for this. It is axiomatic that the issuer-pay model creates a conflict of interest. But, as the CRAs and others correctly point out, all of the possible business models have their own conflicts of interest. As one of the panel participants pointed out, there is no perfect system or model. Unfortunately there will always be errors and bad behavior. The goal, therefore, has to be to encourage a framework for the CRAs that minimizes the systemic risk that they can create.

The role of a research organization, particularly a CRA in offsetting the asymmetric information in the lending/borrowing relationship should be valuable to investors. And the surveillance or monitoring role should also be valuable. This is particularly true for smaller and less sophisticated investors. But, if the focus is on the rating, not the underlying analysis, and the rating is used by an issuer as part of its packaging to sell a security, investors need to be somewhat skeptical.

When I first arrived at S&P and made the rounds among investors, I asked them what they thought of the CRAs, and did they use their ratings. Of course, the responses were varied. But, one theme really struck me, and remains an influence of some of my thinking. Some of the largest and most sophisticated investors said that they do not rely on the ratings. In fact, they would be happy if others did rely on the ratings, so that when the ratings were inaccurate, they would be able to take advantage of this against less sophisticated or less well staffed investment firms. Interestingly, they acknowledged that they also miss-estimated the risks, but nevertheless heaped blame on the CRAs.

This Credit Ratings Roundtable is a result of the direction of Congress that something more be done in regulating the CRAs. Parts of The Dodd-Frank Act made a good first step at reversing the elevated status given to the CRAs through the NRSRO designation, by calling for a removal of their use in Federal regulations. This is biggest single contribution for CRA regulation. (Unfortunately, state insurance companies, foreign regulators, and Basel, continue to give special status to credit ratings).

Going forward, I believe that the possible value of every measure adopted should be looked at through the prism of whether or not it would it have prevented the past CRA-related crises such as the Enron rating failure or the US RMBS debacle .

More than five years following the most recent financial crisis involving the CRAs, despite a great deal of new regulations dealing with processes, not enough has been accomplished on a practical level to improve the system. I share Senator Franken's frustration, because the bad behavior of rating shopping, CRA attention to market share, and the resulting criteria-catering continues. I welcome the Senator's continued attention to this issue in contrast with others who have been ready and willing to forget the past and move on. Now, as a retired senior capital markets executive with a great deal of experience and concern for the integrity of our financial market, I felt compelled to attend the Credit Roundtable that you hosted, and to provide my comments for the public record.

I will address the topics of each of the panels, and also provide some other general comments. All of the comments and discussion are made with the recognition that even though the Dodd-Frank Act seeks to remove the use of credit ratings from regulations, the reality is, thus far, many market participants are still relying heavily on credit ratings as risk measures.

Credit Rating Assignment System

The conflict of interest of the issuer-pay model is that CRAs have an incentive to assign inflated ratings in order to garner favor with issuers for the purpose of getting future business. Issuers want the highest possible credible rating in order to pay the lowest cost. Investors are willing to accept a lower interest rate if the credit risk is truly lower, and/or if they get better regulatory treatment for holding more highly rated bonds (even if the ratings are inaccurate). Removing the latter reason, as Dodd-Frank has done, is very important. CRAs are fearful of issuers taking their business to other CRAs who would assign higher ratings. Panel participants acknowledged that rating-shopping is alive and well. It should be noted that rating shopping is not illegal. The focus of regulation has been on the CRA response to rating shopping. It is quite clear that reputational risk has not been sufficient to control this conflict.

A CRA can inflate ratings in 2 ways. One way clearly violates the regulations the other way is still in a gray zone. The CRA can ignore its criteria and issue a rating that differs from that implied by its criteria, but this is not permitted. Under current regulation CRAs must publish their criteria and assign ratings based on their criteria. If they deviate, they must disclose this and explain the deviation. One way around this, is to deliberately publish vague criteria, with a lot of "wiggle room" or "qualitative" factors. This makes it very difficult for a regulator to judge whether or not an NRSRO is following its criteria. I believe this is the current state of the market.

Another method by which a CRA can inflate its ratings is by weakening its criteria or "tweaking" its assumptions. It can then publish the new criteria; and, rate transactions based on these new criteria. Since the government has maintained its position of allowing the CRAs complete analytic independence, there is no standard for the meaning of a rating. So, a CRA is free to lower its standards to more easily achieve a AAA under its system. (This point is also very important when discussing the issue of credit rating accuracy, as noted below) This is allowed under current regulation and continues to occur. The gray area arises from the IOSCO guidelines, which the CRAs claim to adhere to, CRAs' own internal guidelines (where they advertise their analytic independence) and from provisions in the Dodd-Frank Act such Section 15E(h)(3)(A), which requires the Commission to issue rules to prevent the sales and marketing considerations of an NRSRO from influencing the production of credit ratings by the NRSRO. In a recent response to a government complaint one CRA has used as a defense, another case where a judge has referred to this notion of analytic independence as mere "puffery". So, at this stage it is not clear what some CRAs mean by analytic independence.

Various code words, such as "relevance" have been used to disguise the modification of criteria to maintain or gain market share. The modification of criteria to re-gain market share has been observed recently in CMBS and RMBS, and in counter-party criteria. The reality is that CRAs are profit seeking corporations and that market share will always be an important consideration. This is not a bad thing in and of itself. Regulators and investors need to understand and accept this. And, CRAs need to stop making believe and advertising that business is not a consideration. They should not be permitted to advertise this, if it is false.

The assignment system is supposed to reduce the issuer-pay conflict, by removing some of the issuer choice, and reducing the incentive to engage in rating shopping. The idea is also that maybe CRAs might feel freer to establish criteria that are independent of being selected by the issuer. Moreover, with the selection process based on performance, CRAs would be incented to perform better. The system could also encourage and provide support to the growth of more CRAs, based on good performance.

There are many arguments made against this system. Some argue against the assignment system, because they claim that such a system would appear as an implicit endorsement of the CRA by the government. Clearly this is not the intention of the proposal and informed investors would know this. But, it is possible that uninformed investors may believe this. This should not be the sole reason for rejecting this system. It should be noted that a similar problem occurs with the NRSRO designation. Academics such as Frank Partnoy have argued vigorously against the NRSRO designation. There is certainly a lot of merit to this argument. By creating the NRSRO designation and requiring ratings from NRSROs the regulators gave special status to ratings assigned by NRSROs. The risk that some investors view this as a government endorsement, especially retail investors, remains.

It is possible to regulate CRAs without such special designations or government involvement in the choice of CRAs. It is critical for the success of any plan that contemplates private market CRAs, that the regulators not give any special credit or capital relief based on these risk assessments, and that clear disclaimers note that the NRSRO designation does not imply government endorsement. This type of disclaimer is appropriately incorporated in the proposed assignment system.

Others argue against the system by questioning how the fees to the chosen CRA would be set. But, this is simply another spurious argument to maintain the status quo. The chosen CRA fee would be the same as its normal fee and would be paid by the issuer. As has been widely acknowledged, in the end it is really investors that pay for all the ratings anyway.

Another claim against this system is that it would make the issuance of ABS more costly and time consuming, thus leading to less availability of capital. The same was said about 17g-5, and the same is said about all regulation. Of course there will be some costs associated with the system not currently being incurred, but if the system would substantially reduce the systemic risk, it would be worth it.

Others argue that there are so many different types of ABS deals that system would be difficult to implement with some of the smaller sectors. Again, this argument is being disingenuous about the reality. Most of the market is made of several large sectors.

While Senator Franken should be commended for making an effort at reform of the CRA industry, there are several major real flaws with this system as currently formulated. The assignment system by itself does not reduce the conflict of interest, because issuers are still free to choose CRAs other than the one chosen by the Board. Most structured finance bonds carry more than one rating. CRAs know this, so they still have an incentive to weaken criteria to maintain market share.

The current proposal is meant to create unsolicited ratings. However, like 17g-5, it does not force them to, since under the current proposal a CRA can decline to accept the assignment. A CRA with more stringent criteria might choose not to accept the assignment for fear of alienating an issuer. It is imperative that the assignment system, if adopted, be mandatory. It should be an obligation under the NRSRO designation.

One of the key provisions of the proposed assignment system is rewarding CRAs with assignments based on the performance or accuracy of their credit ratings. It is no surprise that no panel participant was able to articulate a methodology for measuring credit rating performance. Similarly, in the 82 page Report to Congress on Assigned Credit Ratings, there was less than a page discussing metrics for determining the accuracy of credit ratings.

Of course, everyone agrees that measuring performance is difficult! Certainly, if a AAA-rated bond defaults very soon after being rated, one would say the original rating was wrong. And, S&P does explicitly incorporate rating stability into its criteria. Moreover, all the CRAs are now publishing rating transitions, etc. So, we know when performance is horrible, but when it is just bad or awful, it is more difficult to discern or quantify.

Another point is what would the system do, if all the CRAs performed horribly, like with sub-prime RMBS? Who do you reward with assignment of future ratings business? Also, as mentioned earlier, CRAs are free to define a rating anyway they choose. So a AAA from one CRA can mean something entirely different from another CRA's AAA. So, for example, if one CRA had very weak standards for its

AAA and publishes them, and then one of their AAA-rated bond defaults under a more severe scenario, does that mean the CRA performed poorly?

It should be apparent to all that this is a major flaw in this proposal. If performance measurement is a key provision of this assignment system, and we cannot measure performance, then this provision needs to be discarded.

Congress and regulators have tried to encourage the formation of more CRAs based on the notion that greater competition would improve the quality of credit ratings. This is far from clear, and there is certainly theory and evidence that more CRAs do not necessarily lead to better credit ratings. In any case, the reality is that the credit ratings for the structured finance market remains dominated by 3 CRAs. It does seem that more issuer-pay CRAs will have the opposite effect. It is possible that more investor-pay CRAs could help. The assignment system could have the effect of supporting more CRAs.

The proposed framework does not address how it would handle an investor-paid CRA. Could such a CRA be chosen by the Board? If so, would it have to make its rating public? Would the issuer pay for this rating?

Surveillance and updated credit ratings should be an important consideration. In fact a credit spends more of its time in surveillance than the initial rating. Many have noted that the issuer-pay CRAs understaffed and under-resourced their surveillance functions. In structured finance, particularly RMBS, CMBS, and CDOs, issuers do not really care so much about surveillance; their focus is on the initial rating. Investors suffer the consequences of poor surveillance, especially if the initial rating was inflated. It is not clear in the proposed framework how surveillance would be handled. Presumably the CRA assigned to the initial credit rating would be required to keep the credit rating current. And, presumably would follow their system for withdrawing a rating.

On balance, I cannot support the assignment system as currently proposed. From the vantage point of would it have prevented the CRA role in the subprime crisis, it is at best unclear. The market was so large and so lucrative; it is hard to imagine how the proposed assignment system would have stopped the race to the bottom. Moreover, as discussed, there does not appear to be an adequate performance measurement mechanism. Just as I think that the NRSRO designation should be abandoned so to, do I think that the assignment system is not the best approach. If it is ultimately adopted in some form, then an NRSRO should not be able to decline to rate, unless it does not have the skill set.

Rule 17g-5 unsolicited ratings

I am a supporter of unsolicited credit ratings (not hostile ratings, which have been used in the past to coerce issuers into engaging a rating agency). I believe that unsolicited ratings can mitigate the benefit to the issuer of engaging in rating shopping. A small but important example of the potential power of unsolicited ratings to look to was the Federal Reserve's original TALF program for ABS. This program was instituted to support the ABS markets during the market turmoil of the financial crisis. I believe that the Fed was very clever in its original design of the program. For a bond to be TALF eligible, it needed to have a AAA rating from at least 2 "major" NRSROs, but no other "major" NRSRO could have lower than a AAA on the bond. In effect, they were giving a non-hired rating agency the ability to "de-TALF" a bond. Of course, a major flaw with this was that they specified that a "major" NRSRO could de-TALF. (This perpetuated the oligopoly, and did not give investor-pay CRAs any ability to have an effect) I had issuers calling me asking me whether we would issue unsolicited ratings that could "de-TALF" their transaction. While I am completely against providing such government granted power to the credit rating agencies, it does demonstrate the potential power of an unsolicited rating. Moreover, since only "major" NRSROs were included, the problem of a CRA being fearful of retribution by issuers remained a factor for the big 3 NRSROs. I do not believe any new issue was de-TALFed. To S&P's credit, many secondary market CMBS issues were de-TALFed when they published their new, more stringent criteria in 2009. In this case, while there was dismay expressed by investors who owned positions, issuer response was subdued as there were no new issue CMBS at the time. Some investors called me and told me that S&P did not go far enough. (It goes to show all participants have their own biases.)

In contrast to the Fed's TALF program, the ECB's repo program used to require only one AAA rating. This encouraged rating shopping, as issuers had an incentive to choose a get rated by the CRA with the weakest criteria. Subsequently, this was changed to require AAA ratings from 2 CRAs. Regulators should be encouraged to show this kind of leadership. The Fed, for example, should be commended on devising its own stress tests for the banks that they regulate. Insurance regulators took the lead in using Blackrock and PIMCO for some analytics. The point is that all sources should be considered, and their biases understood.

Unsolicited ratings can provide additional information to the investors and regulators. While issuers may not welcome this, investors should and they should pay for this and ongoing monitoring. For a new issue, if the rating comes before pricing, the investor can negotiate for extra spread if the unsolicited rating is lower. And, in the secondary market, the benefit for buyer or seller will depend on whether the unsolicited rating is below or above the outstanding ratings.

It should be noted that credit rating agencies already issue quite a few unsolicited ratings for no charge in the area of sovereign credits. These ratings are used by some market participants and do affect pricing in some cases (US Treasuries were a clear exception).

As head of S&P's global structured finance business at the time rule 17g-5 became effective, I welcomed the provisions regarding unsolicited rating. Unfortunately the rule has failed in its goal of achieving unsolicited credit ratings. This is very disappointing.

When the provision first came out, I was on the Board of the ASF representing S&P. Various fellow Board members expressed to me their view that no CRA would issue unsolicited credit ratings. There were 2 reasons given. One was that no CRA would spend the money on this effort. And, secondly CRAs would be fearful of alienating issuers. It is interesting to me that now, when confronted with the possibility of an assignment system, some that opposed 17g-5 and unsolicited credit ratings now support 17g-5.

I told the Board that I would do my best to have my department issue unsolicited credit ratings. I created guidelines for issuing these ratings, and encouraged my staff to do so. A number of deals met the guidelines and the analysts would have liked to move forward with an unsolicited rating. Unfortunately we could not move forward. The biggest issue was raised by the legal department, which understandably was very concerned with the confidentiality of the information. While 17g-5 permitted the use of the information to arrive at a credit rating, there was no engagement letter which would permit the disclosure by the CRA of the information in a pre-sale or rating report. So we would have been in a position of issuing a rating without a published rationale, or risk violating confidentiality if we did publish the information.

A technical difficulty could still arise assuming the confidentiality issue could be overcome. The information posted on the 17g-5 website is the only information that is provided to the hired NRSRO. It is possible that the non-hired NRSRO may, as part of its criteria, require other information to rate the transaction. This would not be available for this unsolicited rating and the issuer has no obligation to provide this information.

It is correct that over the long term a rating agency does not want to provide ratings for which it is not compensated. However, the strategy would be that investors would find the analysis and perspective of the non-hired rating agency so valuable, that in the future they would demand that the issuer hire that rating agency.

So, instead of issuing unsolicited ratings I created the concept of an unsolicited commentary. The first one was on a RMBS transaction from Redwood. We subsequently published commentaries on a number of different deals while I ran the department. I received a lot of feedback from the market place. I am happy to see that other CRAs have followed S&P's lead. I heard some support by the panelists for commentaries, but I can tell you firsthand that they fall far short of unsolicited ratings.

I received many calls from investors complimenting our effort on the commentaries. They engaged the analysts and were interested in the information provided. Many asked what we would have rated the deals. Of course, we couldn't say, because we didn't rate the deals. I encouraged the investors to ask the issuer to consider hiring us if they wanted our credit rating. The major criticisms from the investors were that the commentary was not a rating, and the timing of the commentaries was problematic. If the commentary came out after pricing, investors who had purchased bonds were not happy. Whereas investors who had not purchased he bonds, felt vindicated. Issuers, on the other hand, were not happy with the commentaries. I had bankers calling me asking whether we would be doing commentaries are their deals.

The timing problem has another dynamic when it comes to a new issue. If the commentary or an unsolicited rating comes out before pricing, it is possible that the SEC would consider this material information and would require the issuer to disclose this information in a "stickered" prospectus.

If unsolicited ratings become the norm, investment guidelines may have to be amended by some funds that require minimum rating levels for the fund to own certain bonds. They will have to decide whether to give the same consideration to unsolicited ratings. This is similar to the "de-TALFing" of a bond.

One of the biggest difficulties in writing an unsolicited commentary is the lack of information. Only information in the public domain can be used for this purpose. The information on the 17g-5 websites can only be used for issuing credit ratings. The publicly available information is not sufficient to issue a credit rating and therefore makes the commentaries less useful as well. Often even the most basic information comes too late to be able to issue the commentary before the pricing of the deal.

I do not know if any of the commentaries have been updated, but clearly surveillance remains an important issue for investors. At this stage there are no accepted standards for what a commentary is or should be. They do not have the same impact as unsolicited rating and will not be able to accomplish what an unsolicited rating can do.

On balance I think 17g-5 was a good idea, but it needs fixing. Both the assignment system proposed by Senator Franken, and rule 17g-5 have as their goals, the issuance of unsolicited ratings. !7g-5, as noted, has thus far failed to produce such ratings, and the assignment system, may also fall short of this goal, if it is voluntary. Instead of the assignment system, I believe that a mandated unsolicited rating system (MURS) could be implemented where the SEC, at its choosing, could require a non-hired NRSRO to rate a transaction and require the issuer to make all information available to this rating agency for use in the rating and its reports. Unlike the assignment system, this does not have to be done for all transactions. The SEC could either randomly choose transactions, or look to see where a particular NRSRO seems to be continuously avoided by issuers. The issuer could be required to pay for this rating the normal fee it would have paid had it hired the NRSRO. The mandated NRSRO would be required to maintain surveillance on the transaction, and could only withdraw the rating following its usual policies. It might also be useful to include investor pay (subscription-based) NRSROs in this system.

This system has a number of advantages. First, it overcomes the confidentiality issue because the regulation will give the mandated NRSRO the same freedom to use the information as it would have had it been engaged by the issuer. It also overcomes the fear that an NRSRO has about offending an issuer, because the system is not voluntary. Unlike the assignment system, this is a lower cost route for the market, because not all deals would have this unsolicited rating. But the knowledge by the market place that this could happen, would result in less rating shopping and criteria catering. The timing issue would also be non-existent, because the non-hired NRSRO would be issuing the ratings at the same time as the hired NRSROs. This system would also accomplish the goal of giving smaller NRSROs the chance to rate transactions and establish their track record and market acceptance. It is, of course, possible that a NRSRO with stringent criteria may still never be hired by an issuer, but its ratings will be out in the market place on some deals, because of the mandated system outlined above. If the investor market place likes these ratings and analysis, they will eventually demand that the issuers use the NRSROs that are being left out. Also, if investor-pay NRSROs were included in the mandatory unsolicited rating system, this would help balance the inherent bias of the issuer-pay NRSROs.

Alternative Compensation Models

Many believe that issuer-pay model is the cause of rating inflation and the race to the bottom. It is true that this arrangement leads to the potential for conflict of interest. But, each of the potential business arrangements has its own conflicts as each user of the ratings approaches the ratings with its own biases, and its particular use of the ratings. Issuers almost always want the highest credible ratings possible on a new issue. Some investors may want a more conservative rating, to get higher spread. Alternatively, some investors may want high ratings to satisfy investment guidelines or to get capital relief, or to show high risk-adjusted returns. Regulators probably want accurate ratings (even though like everyone, they have trouble defining what this is). It could be that ratings there are inaccurate but more conservative are the natural bias of risk managers, but this would produce added cost of capital to issuers.

The issuer-pay CRAs claim that they benefit the public by giving the ratings away for free. This is actually not accurate. While the ratings themselves are published and available, most of the analysis, which should be the most important part, is available by subscription only. So, in effect, the dominant CRAs actually are both issuer-pay and investor pay. They have managed to charge both issuers and investors.

But, the power in this business model remains with the issuers. Losing an issuer is a lot more costly to a CRA than losing a subscription.

The issuer-pay CRAs always raise the free-riding issue when it comes to the subscription-based model. Yet, they seem to manage when it comes to charging investors for the analysis and rating rationales. It seems to me, that the issuer-pay model has dominated because it is simply that the issuers have been willing to pay a lot more for the initial rating than investors would pay. Perhaps investors would pay more for surveillance. Indeed, I use to have discussions with my business heads and client business managers about how to charge for ratings and other services. Questions such as should issuers be charged based on the cost of the service provided, or should they be charged based on the value to them of the service?

Ultimately, as acknowledged by panel participants, investors pay the cost for the ratings. Since they can vote with their pocketbook by choosing not to buy a transaction if investors don't like the ratings, they actually have power in the choice of the rating agency. So trying to fix the problems arising from the conflict of interest of the issuer-pay model by forcing another business model, probably is futile and misses the point. I believe that now that credit ratings are being removed from regulation, investors need to take greater responsibility and accountability when it comes to ratings. They certainly can use them as an input, and there is a lot of useful analysis from the CRAs and Street analysts, but it is time for investors and regulators to do their own analysis. If an investor wants to outsource some of this work, then they should consider paying for it directly, and not relying solely on the analysis of organizations which are paid by issuers who have the exactly opposite interest as the investor. There have been examples where investors have been willing to pay for good research from CRAs. For example, many CMBS investors found the detailed reports from Realpoint (now Morningstar) very helpful.

General comments and suggestions on the credit rating problem

The commission needs to focus on how to regulate a product that is used by many market participants in a variety of ways to limit the potential for systemic damage. I believe that Congress, the SEC, and the CRAs have made some progress, but I do not believe enough has been done to balance the power between investors and issuers. Having worked on the buy-side, sell side, and at a rating agency, I believe that a number of things still need to be done to improve the system.

1. The continued removal of reference to NRSRO credit ratings in regulation is important. State insurance regulators should do the same. There is nothing wrong with using a credit rating as one element in risk analysis, but the requirement of their use has led to artificial importance and over-reliance. No special credit or capital relief should be given for securities based solely on high credit ratings. Financial institutions should demonstrate their own internal risk measures.
2. The marketplace needs to accept the fact that rating agencies are profit-oriented companies. This is true whether they are issuer-pay or subscription based. Their research and ratings need to be used and valued by the market place and paid for. So, regulators and investors must understand that market share is not a dirty word. By the same token, rating agencies need to stop misleading the public with the claim that their ratings are independent of market considerations.
3. A regulation should be considered making it illegal for an issuer to pressure or intimidate a rating agency to change its rating

4. Regulations need to be immediately adopted to require issuers to make all relevant information for credit risk to be available to the public. Investors cannot be expected to do their own analysis if the information is not available. Ratings agencies should be given special status in this regard. If an issuer wants to borrow money from the public markets it needs to disclose relevant information. If the issuer is concerned with giving away strategic secrets it needs to borrow from the private market.
5. Penalties in the financial industry for willful violation of regulations have been very low, and an ineffective deterrent. It is also not sufficient to fine just the firm. Liability and penalties should be increased and directed at individual senior executives. Under the current regulatory regime, if a firm is censured, the management and analysts can just pick themselves up and move to another CRA. This, in fact, has happened.
6. From a consumer protection standpoint, it is misleading that the same letters can be used by any credit agency and yet the meaning can be entirely different. The commission should consider requiring a common standard for credit rating letters, so that a AAA means the same thing for all rating agencies.
7. The Commission should consider requiring NRSROs to provide more justification for their methodologies. While there is merit in analytic independence, it is not unreasonable to expect explanations and data support for parameter assumptions such as loss assumptions, default rates, correlations, etc.

I want to thank the Commission for sponsoring the Credit Roundtable and for inviting public comment.

Sincerely,

David P. Jacob ([redacted]