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By Electronic Mail: rule-comments@sec.gov

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

Re: Release No. 34-69433; File No. 4-661

Moody's Investors Service ("MIS") appreciates the opportunity to provide comments to the Securities and Exchange Commission ("Commission") following our participation in the third panel of the Credit Ratings Roundtable ("Roundtable"), which was held on May 14, 2013.[1]

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There has been a great deal of debate in the attempt to answer what appears to be a deceptively simple question: namely, "*Which business model*" will prevent "rating shopping" in the structured finance market? In our view, there is no "silver bullet" solution. That is because the question comprises three constituent parts, each of which highlights the complexity of the discussion and needs to be explored in its own right. Those three questions are:

1. **Who pays for credit ratings?** Only issuers, investors or governments are likely to pay for credit ratings, and all are parties directly interested in the outcome of the rating.

[1] Prior to the Roundtable, the Commission solicited market feedback regarding the feasibility of establishing a system to assign nationally recognized statistical rating organizations ("NRSROs") to determine credit ratings for structured finance products, a study mandated under Section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). See Release No. 34-64456; File No. 4-629, https://www.sec.gov/rules/other/2011/ 34-64456.pdf. MIS submitted a letter to the Commission, "Request for Comment to Assist in Study on Assigned Credit Ratings" (September 13, 2011), which is available on the Regulatory Affairs page of moodys.com. In that letter, we emphasized the need (1) to enhance disclosures in the structured finance market; (2) to reduce regulatory use of and reliance on credit ratings; and (3) for CRAs to continuously strive to improve processes and methodologies. We also discussed potential negative, unintended consequences of the 15E(w) System. While we continue to support those views today, our comments here are more limited.

2. **Who chooses the credit rating agency ("CRA")?** If the choice lies with an interested party, a conflict of interest is inherent and must be identified, managed and disclosed. If, on the other hand, the choice is made by rotation or lottery, the conflict may be removed, but so too is the competitive incentive for CRAs to provide the highest-quality analysis and opinions.

3. **What role do CRAs serve?** Do CRAs offer their credit views in the broader market discussion about credit risk, or are they a tool of public policy in the regulatory oversight of other industries? If credit ratings are commoditized via regulation, market participants may view ratings as interchangeable, which in turn makes it easier for issuers to rating shop.[2]

MIS does not have a view on what is the "right" business model; nor does it take a position on what the correct industry structure should be (other than that in both instances, the market should decide). Rather, we believe that ratings should be treated as opinion forecasts on credit risk, and should not be used by regulators to oversee other industries or sectors. Indeed, the most targeted and effective means through which the Commission can reduce rating shopping and encourage unsolicited ratings is to enhance the disclosure regime for the structured finance market.

I. Require complete, comparable and accurate information to be readily available to all market participants in all asset classes

MIS believes that the Commission should require complete, comparable and accurate information to be readily available to all market participants in all asset classes. The Commission has proposed amendments to Regulation AB regarding, among other things, the disclosure regime for asset-backed securities, and Subtitle D of the Dodd-Frank Act likewise mandates changes in the disclosure regime for these securities. When the Commission adopts rules pertaining to such disclosures, it should consider making those disclosure requirements at least co-extensive with the information presently required to be provided on a 17g-5 website.

The rigor of such a mandatory and continuing disclosure regime would:

- Improve the quality of the information in the market;
- Foster the greatest diversity of opinions from the widest range of market participants, including other credit opinion providers;
- Enable greater self-policing and greater assessment of the credibility of CRAs on a rating-by-rating basis by all market participants, both of which can serve as a check against ratings inflation; and
- Encourage all market participants to form their own views of credit risk, thereby reducing the potential for misuse of credit ratings.

[2] As MIS has long stated, widespread regulatory use of ratings can lead to the commoditization of credit ratings, which can affect the traditional incentives to differentiate among CRAs based on the ratings' credibility. In this scenario, credit ratings can be perceived as interchangeable, which can dilute the market's reaction to rating shopping.

It is important to highlight the significant disparity between the information presently made available in the 144A market, which as of today includes a large percentage of the structured market, and the information made available to the market for registered securities. In this regard, we note that continuing with this very limited disclosure regime would not have the same beneficial effects identified in the four bullet points above. We therefore believe that the Commission should consider whether the disclosure regime for the 144A market should be altered.

II. In the alternative, adopt amendments to Rule 17g-5

A. Remove bars to publishing unsolicited opinions

As currently constructed, Rule 17g-5 has three provisions that make publishing unsolicited credit ratings difficult.

1. Confidentiality restrictions prevent the publication of unsolicited views.

Under Rule 17g-5, the hired NRSRO must obtain a contractual representation that the issuer, sponsor, or underwriters (collectively "arrangers") will create a 17g-5 website for the benefit of non-hired NRSROs. Pursuant to Rule17g-5(e), in order to access the website, the non-hired NRSRO must annually certify to the Commission that it will use the information "solely for the purpose of determining or monitoring credit ratings", and that it will "keep the information it accesses … confidential and treat it as material nonpublic information.…" In addition, arrangers typically incorporate confidentiality restrictions into the agreements imposed on the non-hired NRSRO accessing the website.[3]

In publishing credit ratings, however, most CRAs (and all NRSROs) need to publish more than just an alpha-numeric symbol. It is important that NRSROs also communicate to the market why they believe the assigned credit rating is appropriate by publishing the rationale underlying the rating. Moreover, under Rule 17g-7, adopted pursuant to Section 943 of the Dodd-Frank Act, with respect to structured ratings, NRSROs must publish a description of the representations, warranties and enforcement mechanisms available to investors, and how they differ from those in similar securities. When Section 932 of the Dodd-Frank Act is fully implemented, NRSROs will be required to make additional disclosures to the market, including, *e.g.*, a description of the data relied upon to determine the credit rating and a statement containing an overall assessment of the quality of information available relative to the quality of information available for similar securities. In addition, each time MIS publishes a rating, we

[3] In the adopting release for Rule 17g-5, the Commission noted that commenters to the proposed rule "argued that NRSROs accessing arranger information pursuant to the rule should be required to provide confidentiality agreements to the arranger." In response, the Commission allowed for arrangers, for example, to "interpose a confidentiality agreement" via the 17g-5 website, noting "[p]resumably, this confidentiality agreement would contain the same terms as the confidentiality agreement between the arranger and the hired NRSRO." See 17 CFR Parts 240 and 243, Release No. 34-61050; File No. S7-04-09, RIN 3235-AK14, "Amendments to Rules for Nationally Recognized Statistical Rating Organizations" Nov. 23, 2009, at 66.

The hired NRSRO, however, is in privity with the arranger, and as a result may be contractually authorized to make disclosures beyond the alpha-numeric symbol without risk of violating any confidentiality obligations.

also publish, among other things, a summary of the key rating assumptions and a sensitivity analysis of the relevant key rating assumptions, as well as language to indicate which substantially material sources of information were used to prepare the rating.

Currently, however, these disclosures cannot be made without potentially violating the annual certification and terms of service to which non-hired NRSROs are bound. Publishing commentary (as opposed to a rating) does not overcome this hurdle because the commentary itself would generally need to include information from the 17g-5 website that has been deemed confidential yet is necessary to explain the NRSRO's credit views. For MIS, the instances in which we have published unsolicited commentary have been limited to those instances in which either (1) the offering document was made publicly available, or (2) we had access to the press release accompanying the credit rating published by the hired NRSRO and it contained sufficient public disclosures. The information contained in the offering document is generally adequate; in the 144A market, however, it is not publicly disclosed. While we appreciate the need to protect confidential information, these restrictions are constraining market access to unsolicited credit views.[4]

2. The 10% requirement may hinder the ability to publish unsolicited opinions.

The Commission should consider removing the requirement that the NRSRO accessing the 17g-5 website issue unsolicited ratings for at least 10% of the issuances it accesses, if it accesses 10 or more issuances. We believe that the Commission should encourage NRSROs to view as many 17g-5 websites as possible in an effort to increase the likelihood that non-hired NRSROs will identify a transaction in which they have a different credit view from the hired NRSRO. Non-hired NRSROs more likely than not will only publish unsolicited credit opinions that vary from already published credit opinions because if their view is not substantially different, the opinion lacks real value to the market. The 10% requirement could be discouraging active viewing by obligating non-hired NRSROs to provide credit views on perhaps more deals than they believe is valuable for the market. Eliminating this condition could therefore result in more, rather than fewer, credit opinions in the market.

3. Requiring credit ratings as opposed to credit commentary may discourage publication of unsolicited credit views.

The Commission should consider encouraging unsolicited *commentary* as opposed to promoting only unsolicited ratings. CRAs exist to encourage more discussion and debate in the market, and commentary short of a rating can still trigger these important market deliberations. In other words, encouraging market dialogue can be a healthier goal for the markets than more narrowly focusing on encouraging only more credit ratings. We believe that broadening Rule 17g-5 in this manner can achieve what is in our view a more important policy objective.

B. Disclosure of preliminary ratings does not prevent rating shopping

We do not agree with those market commentators who have recommended that "preliminary" credit rating opinions be disclosed. In our view, such a rule would *not* discourage

[4] As we have previously commented, MIS continues to believe that it is important for issuers and not CRAs to be responsible for making any necessary disclosures.

rating shopping. Rather, issuers would be motivated to shift their rating shopping to an earlier stage in the process by, for instance, not approaching CRAs with published methodologies that are more conservative in approach.

C. Additional Public Policy Initiatives

MIS also supports the following public policy initiatives to encourage high quality ratings and further reduce rating shopping:

- **Reduce regulatory use of ratings.** The U.S. government, specifically the SEC, has taken meaningful steps toward reducing regulatory reliance on credit ratings, an important goal of the Dodd-Frank Act. MIS favors continuing and accelerating that effort, which would remove one of the key drivers behind rating shopping in the structured finance market. We caution against adopting rules that conflict with this broadly supported and important goal.

- **Refrain from artificially setting supply or demand for ratings.** Policymakers should avoid creating artificial supply and demand in the industry by either barring or mandating the use of credit ratings of certain providers.

III. Conclusion:

MIS appreciates the desire to examine the question of *"which business model"* and values the opportunity to contribute to this complex discussion. In our view, this question must be part of a bigger discussion aimed at achieving a targeted, effective and long-lasting solution to the problem of rating shopping in structured finance: specifically, "How can the system encourage high-quality views on credit risk?" We believe a crucial part of the answer lies in enhanced disclosure.

MIS continues to adopt measures to strengthen how we manage potential conflicts of interest, improve the quality of our credit ratings, reinforce our independence and increase the transparency of our credit ratings. Importantly, we believe that CRAs should be able to choose the business models that provide them with the best incentives to deliver the highest-quality ratings. This must be the goal of the public policy agenda.

Sincerely,

Farisa Zarin
Managing Director, Global Regulatory Affairs
Moody's Investors Service