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

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Re: *Credit Ratings Roundtable, File No. 4-661*

Dear Ms. Murphy:

DBRS, a nationally recognized statistical rating organization ("NRSRO"), appreciates the opportunity to comment on the Credit Ratings Roundtable which the Commission held on May 14, 2013. The Roundtable explored the potential creation of a credit rating assignment system for asset-backed securities, as contemplated by Section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"); the effectiveness of the SEC's current system to encourage unsolicited ratings of asset-backed securities; and other alternatives to the issuer-pay business model for credit rating agencies.

In addition to the views expressed below, DBRS refers the Commission to the comments DBRS submitted in connection with the Commission's related Study on Assigned Credit Ratings ("2011 Comments").[1] DBRS also generally endorses the views expressed at the Roundtable and in the subsequent comments submitted by the Structured Finance Industry Group ("SFIG").[2]

CREDIT RATING ASSIGNMENT SYSTEM

Failure To Meet The Threshold For Action

Section 939F of the Dodd-Frank Act directs the Commission, by rule, to establish a new system for the assignment of NRSROs to rate structured finance products *as the Commission determines is necessary or appropriate in the public interest or for the protection of investors.* In other words, the Commission must make a threshold determination regarding the public interest and the protection of investors before engaging in any new rulemaking on assigned credit ratings.[3] If the threshold

[1] Letter regarding SEC File No. 4-629 from Daniel Curry, President, DBRS and Mary Keogh, Managing Director, Regulatory Affairs, DBRS to Elizabeth M. Murphy, Secretary, SEC, dated September 13, 2011.

[2] Letter from Richard Johns, Executive Director, SFIG to Elizabeth M. Murphy, Secretary, SEC, dated June 3, 2013.

[3] The consequences of neglecting threshold determinations in Dodd-Frank rulemaking are illustrated by *International Swaps & Derivatives Ass'n. v. U.S. Commodity Futures Trading Commission,* 887 F. Supp. 2d 259 (D.D.C. 2012). In this case, the court vacated and remanded to the CFTC for further proceedings a derivatives position limits rule that the CFTC had adopted pursuant to the Dodd-Frank Act. In so doing, the court rejected the CFTC's contention that its rulemaking was mandated by the statute without regard to whether such rulemaking was necessary or appropriate. Although the court found the phrasing of the

determination is made, the SEC must implement the system described in Exchange Act Section 15E(w) -- a Dodd-Frank provision that was never enacted -- unless the SEC determines that another system would better serve the public interest and the protection of investors.

While panelists at the Roundtable discussed many of the ways in which a Section 15E(w) system would not serve the public interest or the protection of investors, scant attention was paid to the threshold question as to whether *any* rulemaking is necessary and appropriate in this situation. DBRS continues to believe that the answer to this question is a resounding *no*.

As it stands today, NRSROs are subject to a host of statutory and regulatory obligations adopted in the public interest and designed to protect investors. Certain conflicts of interest are prohibited outright, while others must be managed and disclosed. Analytical staff must be functionally and physically separated from business development staff, and "look-back" reviews must be conducted whenever an employee involved in a credit rating goes to work for the rated entity or the issuer, underwriter or sponsor of a rated security. Analyst training requirements will soon be imposed on NRSROs as well.

Furthermore, NRSROs are subject to more extensive disclosure obligations than those applicable to broker-dealer analysts, investment advisers or any other promulgator of investment-related opinions or reports. In this regard, NRSROs must publish their rating methodologies, a comprehensive history of each rating and annual transition and default studies showing the performance of all ratings over time.[4] A number of additional disclosure and performance measurement rule proposals are pending.

An NRSRO's compliance with this extensive array of obligations is subject to virtually perpetual examination by the Commission's Office of Credit Ratings.

In order to cross the threshold to permissible rulemaking here, the Commission must find that the panoply of recently adopted and still-to-be-adopted NRSRO requirements is insufficient to protect investors, and that even with all of the publicly available information about rating methodologies and performance history, investors are incapable of evaluating the relative quality of NRSROs and their credit ratings and therefore, need the government to do it for them.

Since the last batch of proposed Dodd-Frank rules has yet to be implemented, DBRS submits that the Commission cannot make the required "necessary and appropriate" findings at this time.

Dodd-Frank amendment to the Commodity Exchange Act to be ambiguous (hence the reason for the remand), no such ambiguity exists in Section 939F. It is clear that the SEC is to adopt a rule establishing a system for the assignment of credit ratings only upon a determination that such a system is necessary and appropriate in the public interest or for the protection of investors.

[4] DBRS's most recent structured finance rating transition and default study covers DBRS's rating history from 1985 through 2012; its most recent corporate rating report covers the period from the Company's inception in 1976 through 2012. Both of these reports are available on the DBRS website, free of charge.

Impediments To A Section 15E(w) System

Cost

While several of the panelists referred to the expense of the bureaucratic system envisioned under Section 15E(w),[5] there was no meaningful discussion at the Roundtable of the proposal's true costs versus intended benefits. As DBRS noted in its 2011 Comments, the costs of convening and staffing a CRA Board would be enormous, and no provision is made for covering these costs until applications from Qualified NRSROs are submitted a year or more hence.[6] Even then, it is unlikely that the pool of Qualified NRSROs would be large enough to defray the CRA Board's operating expenses on an ongoing basis. The costs of complying with whatever additional regulation the CRA Board decides to adopt would further burden the participating NRSROs, with a disproportionate impact of that cost being felt by the small NRSROs -- the very ones whose participation 15E(w) seeks to encourage.

Conflicts of Interest

The conflicts inherent in the CRA Board approach also received a light touch at the Roundtable. As DBRS explained in its 2011 comments, the 15E(w) system would replace the existing disclosed and managed risk that an NRSRO might alter its rating to curry favor with an issuer or subscriber that pays for the rating with a range of conflicts that could affect either the NRSRO's behavior or that of the whole CRA Board or particular members thereof.[7] Establishing a complex system of recusals to address these permutations and combinations of conflicts would impede, if not destroy, the Board's effectiveness.

Constitutional Issues

One of the Roundtable panelists opined that, on balance, the 15E(w) system appeared to be constitutional because it would merely require an issuer to hire an *additional* NRSRO (*i.e.*, the one chosen by the CRA Board), rather than supplant the NRSRO of the issuer's choice with the one chosen by the Board. This analysis assumes that the word "initial" in 15E(w)(4) and (9) is synonymous with "first" and that the assignment system would not preclude an issuer from obtaining other credit ratings sufficiently in advance of the closing of a structured finance deal for potential investors to consider them.

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[5] Although one panelist took issue with the pejorative characterization of the CRA Board as "bureaucratic," this adjective is the only way to describe a system that envisions the creation of a new self-regulatory organization.

[6] 2011 Comments at 7 - 8. Among these costs are those related to the engagement of the seven board members and a staff of sufficient size and skill to evaluate the credit rating process for each type of structured finance asset. Before accepting Qualified NRSRO applications, the CRA Board would have to conduct a securitization study and adopt membership and assignment rules. As a self-regulatory organization, the pay scale of the Board and its staff is likely to be considerably higher than that of a government agency.

[7] *Id.* at 10-12.

Unfortunately, this construction of the statute is by no means clear. Elsewhere in the NRSRO regulatory regime, the word "initial" is used to distinguish such a rating from an upgrade, downgrade, affirmation, *etc.* of an existing credit rating.[8] Under this construction, Section 15E(w)(4)'s prohibition on an issuer's requesting *an initial credit rating* from an NRSRO would mean that an issuer may engage an NRSRO of its choosing only to issue upgrades, downgrades, affirmations, *etc*. of the initial rating issued by the NRSRO the CRA Board selects. Unless the assigned and issuer-selected ratings could be released at or near the same time, the government rating would supplant rather than supplement the rating from the issuer-selected NRSRO.

Other Roundtable panelists seemed to acknowledge this ambiguity, expressing concern that a structured finance deal could fail if only the Board-selected NRSRO were allowed to issue a rating before the deal came to market. DBRS respectfully submits that this ambiguity must be resolved in order for the constitutionality of Section 15E(w) to be fully assessed.

Other Issues

In addition to the foregoing, DBRS also shares the concerns of the Roundtable panelists who opined that the CRA Board's mandated evaluation of "the accuracy" of Qualified NRSRO ratings and "the effectiveness" of such rating agencies' methodologies would run afoul of Exchange Act 15E(c)(2), which forbids the Commission from regulating either the substance of credit ratings or the procedures and methodologies by which such ratings are determined. Moreover, DBRS agrees that the 15E(w) system could impede capital formation due to delays in issuing assigned ratings, or due to the CRA Board's selection of a Qualified NRSRO who does not satisfy the investment guidelines of a deal's proposed investors. DBRS further agrees that involving the government in the NRSRO selection process would pose a moral hazard and would countermand efforts to reduce undue investor reliance on credit ratings.

THE CURRENT SYSTEM TO ENCOURAGE UNSOLICITED RATINGS OF ASSET-BACKED SECURITIES

The second panel at the Roundtable explored the effectiveness of the system already established under the NRSRO conflicts rule to facilitate the issuance of unsolicited ratings on asset-backed securities. Pursuant to Exchange Act Rule 17g-5(a)(3), NRSROs and issuers have invested substantial time and money over the past three years implementing a system to provide non-hired NRSROs with the same information about structured finance deals as that provided to the NRSROs the issuers hire. DBRS agrees with the views expressed by several panel members that the effectiveness of the 17g-5 system has been hampered by certain of the Rule's restrictions.

In order to improve the utility of the system, DBRS favors modifying the requirement that non-hired NRSROs agree to access the 17g-5(a)(3) websites solely for the purpose of determining or monitoring credit ratings to include issuing commentary on other NRSROs' credit ratings. As one of the panelists pointed out, providing commentary is less resource-intensive than issuing credit ratings, while still bringing fresh perspective to the marketplace. Commentary by non-hired NRSROs can also expose weaknesses in the analysis performed by the some of the larger

[8] *See* e.g., Exchange Act Rule 17g-2(a)(8), and proposed Rule 17g-7(a).

NRSROs and may afford newer and smaller rating agencies a chance to prove themselves to issuers and investors who may hire or cause them to be hired for future deals.

DBRS also favors eliminating the requirement that non-hired NRSROs who access 17g-5(a)(3) websites annually agree to determine and maintain credit ratings for at least 10 percent of the issued securities and money market instruments for which they access information. DBRS believes that the 10 percent commitment inhibits some NRSROs from even thinking about engaging with the system.

DBRS believes that leveraging the work the industry has already done to implement Rule 17g-5(a)(3) would be more efficient and effective than force feeding government-assigned credit ratings to investors.

ALTERNATIVES TO THE ISSUER-PAY MODEL

The third panel explored other alternatives to the issuer-pay business model. Of particular relevance here is the fact that at least two NRSROs that formerly operated on a subscriber-pay model have found that model to be unsustainable and have migrated to a largely issuer-pay model instead. In fact, of the seven NRSROs that are currently registered in the category of asset-backed securities, none operates on a subscriber-pay model.[9]

Nevertheless, one of the panel members proposed the creation of an investor-owned credit rating agency; another proposed the creation of an endowment-funded non-profit rating agency; and a third proposed an open-source "Wikipedia"-like credit rating agency. DBRS notes that the NRSRO regulatory regime is broad enough to encompass all of these models, and so long as they abide by the same comprehensive set of laws and rules that apply to issuer-pay NRSROs, DBRS welcomes them to the marketplace. That said, DBRS believes that it is not appropriate for the government to pick and choose among competing business models. That choice is best left to the users of credit ratings.

In that regard, the Roundtable discussion did highlight one area in which Commission involvement might help. Time and again panelists noted that an issuer's selection of NRSROs is often dictated by the investment guidelines of major institutional investors. While it is not the government's place to prescribe institutional investment guidelines, to the extent that these guidelines are controlled by regulated entities such as investment advisers and investment companies, the SEC does have a legitimate role to play in ensuring that such guidelines conform to fiduciary standards.

Consistent with this role, the Commission could issue interpretive guidance to advisers and funds regarding the application of the fiduciary duties of care and loyalty to the use of NRSRO ratings in investment decisions. In so doing, the Commission could suggest that regulated fiduciaries select NRSROs based on the rating agencies' methodologies and the relevant performance history of

[9] The one subscriber-pay rating agency represented at the Roundtable relies exclusively on quantitative analysis to determine ratings and does not employ analysts. This firm also is unregistered, having determined that the benefits of NRSRO registration do not outweigh the costs.

their ratings.[10] The Commission also could warn fiduciaries against a mechanistic default to the larger, market-dominant rating agencies, and could advise regulated parties to document the justification for any NRSRO selections reflected in investment guidelines. The Commission then could review such selections during the course of compliance examinations.[11] Finally, in order to reach a wider audience, the Commission could add this issue to its ongoing work with the U.S. Department of Labor regarding the definition of fiduciary and articulation of fiduciary standards under ERISA.

This approach would use established laws and rules to remove a forceful market impediment to competition among NRSROs, and it would do so without upending the very expensive NRSRO regulatory regime that has so recently been put in place.

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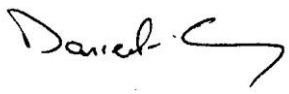
DBRS appreciates the opportunity to comment on the Credit Ratings Roundtable. We would be happy to supply the Commission or the staff with additional information regarding any of the matters discussed herein. Please direct any questions about these comments to the undersigned or to our outside counsel, Mari-Anne Pisarri. She can be reached at 202.223.4418.

Very truly yours,



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[10] As one of the Roundtable panelists noted, an assessment of ratings performance may depend on the investor's time horizon.

[11] In fact, the SEC's Office of Compliance Inspections and Examinations could undertake a sweep exam of institutional investor practices in this area as a prelude to the Commission's interpretive guidance.