

# Kroll BondRatings™

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*VIA E-MAIL: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)*

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

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

Dear Ms. Murphy:

Thank you for inviting me to participate in the Roundtable.

You invited me here because I founded a rating agency 3 years ago. Since the day we signed the lease and opened for business, our mission has been simple: to become a legitimate competitor in the credit rating business, to be an alternative to the entrenched oligopoly, and to be a clear voice that investors could trust.

Given that mission, it's pretty clear why, from Day One, the Franken Amendment proposal has been a topic of lively debate in our hallways.

And I'll tell you that we don't all agree. The fact that we're sitting at a Roundtable tells you that the question of whether to have a rotation system is not easy. But my firm has basically come to two schools of thought. To the question of "Rotation – yes or no?" our answers are "Yes," and a more lawyerly and nuanced "It depends."

Here's the argument for "Yes": a rotation such as proposed by the Franken Amendment could be a way of breaking the stranglehold of the incumbent rating agencies on the credit rating business. The fact that this stranglehold exists, and is detrimental to public policy, was recognized by Congress when it adopted the 2006 Credit Rating Agency Reform Act. Congress stated as a reason for the 2006 Act that "credit rating agencies are of national importance [and that] the 2 largest credit rating agencies serve the vast majority of the market, and additional competition is in the public interest."

The "Yes" answer comes from the sense that the status quo left this country teetering on the edge of financial collapse in 2008. The corollary to a plainspoken "Yes" is that a rotation system should not be buried in layers of impenetrable bureaucracy. On the other hand, there are certainly considerations of how to do the rotation fairly, and avoiding unintended consequences.

Which leads us to our other position: "It depends."

It's clear that the reason for a rotation would be to break up the oligopoly. The further belief that the greatest potential for harm comes from structured finance securities, so that would be the sole focus of the rotation. But the oligopoly is not built only on structured finance: much of the revenue, and therefore the power to control markets, comes from Moody's and S&P's domination of municipal and corporate ratings. Moody's and S&P ratings are entrenched in all of our marketplaces, not just structured finance. As we've seen, the smallest issuers of corporate debt and the biggest, the smallest townships in America and world's greatest nation, can be shaken to the core by a change in their ratings.

Conversely, because structured finance is a highly specialized and high margin business, it actually offers a chance for a new guy like me to get in, build a team of experts, and compete.

So, to the question of whether to have a rotation, our firm would ask – why limit it to structured finance? Why not have it apply to municipals and corporates as well?

A second more modulated approach would be to adopt the rotation, but have it sunset – perhaps after 4 years.

What long-term purpose would be served by this? The answer is that part of the reason the oligopoly is so ingrained is that many institutional investment policies require investment boards to select securities that are rated by Moody's or S&P, or both. This may be the single largest competitive hurdle that new and small agencies like mine face.

Putting the rotation in place for a limited time would force the investment guideline shackles to be broken. This would go a long way to leveling the playing field, which is what this Roundtable is ultimately about. But once the grip of the guideline-induced inertia is broken, there may be less need for the rotation, since we're closer to a place where rating agencies can compete on merit.

It goes without saying that if some version of the rotation is adopted, it has to be market-friendly rather than a source of disruption. From the perspective of investors, issuers and rating agencies, the market works best when an aggressive, informed and disciplined approach is taken. There is legitimate cause for concern that letting a regulatory board be the sole arbiter for selection of agencies to rate deals could drive the agencies to be unduly conservative, in an effort to win favor with the board. So in looking for a solution, there needs to be some room for issuer involvement in selecting which firms rate their securities, so that any artificial conservatism is tempered by the pressure of competition.

As I see it, the right solution does not need to be complex. The SEC already has a mechanism for registration and approval of rating agencies. They are already the gatekeeper. The selection of rating agencies by an issuer based on a rotation could take different forms. For example, the issuer could approve some minimum group of qualified rating agencies, and then have a rotation to make the final selection; or the issuer could select one or two qualified agencies, and the "wheel" would select one or two. There are many examples of workable rotation systems, such as the rotation of judges in federal courts. In our setting, the SEC would say who is in the rotation; the issuer would make a selection based on the rotation; and the SEC would oversee compliance. The fact that Freddie Mac successfully uses a type of rotation for its deals shows that it can be done. The Freddie Mac example also shows that setting fees can be accomplished without needless bureaucracy. For example, there can be a pre-set schedule for different types of security issues similar to a mark-up grid used in fixed

income trading, or there could be some other type of pre-set fee schedule. My point here is not to suggest what all of the questions are, and what the solutions might be. Rather, I'm just highlighting that you can stick to a guiding principle of having a straight-forward process, and still have many possible approaches – a number of which I'm sure will be more fully vetted by the other panels today.

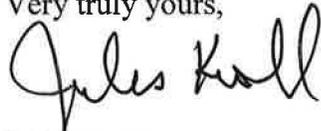
I'll close with a last thought: it's human nature to believe that solutions that are nuanced and detailed, and complicated, are necessarily more thoughtful, and are therefore preferable. But sometimes, nuance and complication are not the best outcome. As Steve Jobs said: "Simple can be harder than complex: You have to work hard to get your thinking clean to make it simple. But it's worth it in the end because once you get there, you can move mountains."

And that's where I'll leave it. Kroll Bond Ratings will play the game on whatever playing field is set up, but for our sake and the country's sake, let's make that playing field as level as we can.

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Thank you for giving me the opportunity to provide this statement. Please call me at (212) 702-0707 with any questions that you might have or to discuss this matter further at your convenience.

Very truly yours,

A handwritten signature in black ink that reads "Jules Kroll". The signature is written in a cursive, flowing style.

Jules Kroll  
Chairman and CEO  
Kroll Bond Rating Agency, Inc.