The Credit Roundtable
In association with the Fixed Income Forum

April 29, 2019

Reference: File Number S7-01-19 regarding Solicitations of Interest Prior to a Registered Public Offering

Brent J. Fields, Secretary,
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Sir or Madam:

The Credit Roundtable[1] appreciates the opportunity to comment on the new Securities and Exchange Commission's ("SEC") proposed test-the-waters rule and related amendments.[2]

We understand that the proposed new rule under the Securities Act of 1933 would expand the ability of issuers to engage in pre-offering communications with institutional investors by permitting issuers to engage in oral or written communications with potential investors to determine if there is interest in a contemplated registered securities offering. We support increasing the efficiency of the underwriting and distribution process by providing increased flexibility to issuers with respect to their communications with institutional investors about contemplated registered securities offerings.

In the following letter we will discuss the current process of marketing and investor interest evaluation prior to an offering of corporate credit securities and our recommendations.

Improving the underwriting and distribution process by which companies sell corporate debt to investors is one of the long-standing endeavors of the CRT.

[1] Formed in 2007, The Credit Roundtable ("CRT"), organized in association with the Fixed Income Forum, is a group of over forty large institutional fixed income managers including investment advisors, insurance companies, pension funds, and mutual fund firms, responsible for investing more than $3.8 trillion of assets. The Credit Roundtable advocates for creditor rights through education and outreach and works to improve fixed income corporate actions, ineffective covenants, and the underwriting and distribution of corporate debt. Its mission is to improve risk assessment and management through education and seeks to benefit all bond market participants through increasing transparency, market efficiency, and liquidity.

[2] The Commission is proposing for public comment 17 CFR 230.163B (new "Rule 163B") under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act") and amendments to 17 CFR 230.405 ("Rule 405") under the Securities Act.

One of our guiding principles is to create a level playing field by improving access to and increasing the dissemination of information during the pre-offering period.

There are generally two types of investor meetings: 1) Investor updates that occur periodically or to address a particular market event, and 2) so-called "non-deal" roadshows. Regarding the former, CRT members enjoy and strongly support efforts by regulators, issuers, and their agents to increase regular communication and updates with credit investors in order to more efficiently price and allocate risk. However, we believe the rules regarding "non-deal" roadshows should be updated as part of proposed test-the-water rule changes.

Despite the title, during a typical "non-deal" roadshow, an investment bank (the "underwriter") arranges conference calls, group, and individual meetings between their client (the "issuer") and investors, with the goal of informing and updating the market in anticipation of an offering of corporate debt securities (a.k.a. a new "deal".) Although there are various interpretations of existing guidance regarding pre-marketing a corporate debt offering, generally issuers and underwriters do not officially engage in significant market soundings during the "non-deal" roadshow. Conversations regarding timing, structure, duration, and price of a potential debt offering are avoided or occur in an indirect, convoluted and often one-sided manner. Financial and other material presented are often retrieved at the end of the meetings, even when the same information is available on the issuer's website. It is important to note that some issuers and underwriters allow European analysts to retain the printed financial and marketing material after these meetings, while retrieving it from research analysts whose firms are domiciled in the United States.

The CRT supports efforts to eliminate the "charade" aspect of the non-deal roadshow. It creates unnecessary limits on the dissemination of pre-deal information due to the uncertainty of existing SEC guidance. We encourage the SEC to clarify the rules regarding pre-deal marketing of corporate debt offerings. Specifically, we support changes that would encourage issuers to engage in oral and written communication with institutional investors and to have an open and transparent dialogue regarding investor interests in an expected corporate debt offering.

Thank you for this opportunity to provide feedback on the proposed new test-the-waters rule. We've provided brief answers to your request for comment below. We also welcome the opportunity to discuss our concerns, opinions, and recommendations in greater detail. Please direct any questions to Cathy Scott, Director of the Fixed Income Forum, on behalf of The Credit Roundtable.

Kind Regards,

Cathy Scott

Cathy Scott | Director | Fixed Income Forum
On Behalf of The Credit Roundtable

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Request for Comment

1. Would the proposed exemption from Section 5(b)(1) and Section 5(c) to allow solicitations of interest from QIBs and IAIs prior to and following the filing of a registration statement provide issuers with appropriate flexibility in determining when to proceed with a registered public offering? Do test-the-waters communications aid issuers in assessing demand for their offerings? Do they aid issuers in structuring their offerings? Does this information potentially lead to a lower cost of capital? Would the additional flexibility provided by the proposed rule result in a greater number of issuers pursuing a registered public offering? Why or why not?

   We think pre-deal market soundings currently occur under a cloud of uncertainty. Allowing corporate credit issuers to openly engage with the market to assess and meet investor demand would improve the flow of capital.

2. In what circumstances and how do EGCs currently take advantage of the accommodations of Securities Act Section 5(d)? What are the reasons why an EGC may choose not to avail itself of the accommodations?

   Not applicable.

3. Does the proposed expansion of permissible test-the-waters communications raise investor protection concerns? If so, how? Does the proposed expansion of permissible test-the-waters communications raise concerns of inappropriate marketing, conditioning, or hyping? How might such concerns be alleviated?

   Any expansion of the test-the-waters communications should be factual and available to all investors regardless of size or investment style.

4. Should test-the-waters communications under the proposed rule be deemed "offers" under Securities Act Section 2(a)(3) that are subject to

Section 12(a)(2) liability, as proposed? Why or why not?

The test-the-waters communications for corporate credit investors should consist of an investor update and an open dialogue of investor interests and issuer needs regarding timing and structure of a potential new debt issue.

5. Should we require written communications under the proposed rule to be filed with the Commission, for example, as an exhibit to a registration statement, and to become subject to Section 11 liability? Why or why not? If so, at what point should they be required to be filed?

   The Credit Roundtable supports broad, timely and accurate dissemination of information as well as an active and open dialogue between credit issuers and investors. Written material provided during market soundings that is broadly available should not be subject to additional filing requirements. Many pre-deal market soundings or test-the-waters engagements are verbal.

6. Should legends or disclaimers be required on any written materials used in compliance with the proposed rule? Why or why not? If so, should we prescribe the content of those legends or disclaimers?

   A clear, brief disclaimer should accompany any forward-looking information.

7. Should we permit written or oral solicitations of interest to be made by an issuer before and after a registration statement is filed, as proposed? Why or why not? Should we treat pre-filing and post-filing test-the-waters communications differently? If so, how should they be treated?

   Yes; the CRT recommends that written or oral solicitations of interest be

permitted between credit issuers and investors before and after a registration statement is filed and that these market soundings be treated equally.

8. In what circumstances does Regulation FD affect the use of the current accommodation for test-the-waters communications under Section 5(d)? Should there be a specific exception to Regulation FD for some or all communications made in compliance with the proposed rule? If so, under what circumstances and how should such an exception apply?

   The CRT believes test-the-waters flexibility or specifically market soundings prior to a new credit issue should have reasonable exceptions to Regulation FD for some communications such as open ended dialogues on investor and issuer needs and wants.