



October 27, 2010

Mr. Randall W. Roy
Associate Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request for Permanent Extraterritoriality Exemption from Rule 17g-5 Requirements under the Securities Exchange Act

Dear Mr. Roy:

On behalf of the global memberships of the Australian Securitisation Forum (“AuSF”)¹ and the American Securitization Forum (“ASF”)², we reiterate our previously expressed concern regarding the extraterritorial application of the rules adopted by the Securities and Exchange Commission (the “Commission”) pursuant to Release No. 34-61050 (the “Adopting Release”)³ with respect to Nationally Recognized Statistical Organizations (“NRSROs”). In particular, the Adopting Release sets forth Rule 17g-5(a)(3) (the “Rule”) under the Securities Exchange Act of 1934 (the “Exchange Act”), which requires an issuer, underwriter or sponsor (collectively, “arrangers”) to post information provided to hired NRSROs on a password-protected website and make it available to non-hired NRSROs. Prior to its adoption, the ASF presented a set of discussion points and areas of concern in connection with the Rule at an in-person meeting with Commission staff on April 27, 2010.⁴ Similarly,

¹ The AuSF was formed in 1989 to promote the development of securitization in Australia. As the peak industry body representing the Australian securitization market, the AuSF performs a pivotal role in the education of government, regulators, the public, investors and others who have an interest or potential interest both in Australia and overseas, regarding the benefits of securitization in Australia and aspects of the Australian securitization industry.

² The ASF is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

³ See Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009).

⁴ For ASF’s talking points, see http://www.americansecuritization.com/uploadedFiles/ASFDiscussionPoints_ImplementationofAmendedRule17g-5_042710.pdf.

the AuSF submitted letters to the Commission on May 14, 2010⁵ and June 25, 2010⁶ outlining their own concerns with the Rule and its negative impact on global issuance of asset-backed securities (“ABS”).

Given the strong concerns presented by global industry and policymaking participants, the ASF and AuSF commend the Commission’s May 2010 Temporary Exemptive Order, which generally exempts an NRSRO for a 6-month period from compliance with the Rule for ratings of structured finance products where the issuer is a non-United States person and the transaction occurs outside the United States.⁷ Given the Order’s expiration on December 2, 2010, we respectfully request the Commission make permanent the exemption for extraterritorial ratings given the undue negative impact the Rule would have on global issuance of ABS and, more broadly, the lack of progress the Rule has made in the U.S. toward achieving the stated goals of the Commission since the June 2, 2010 compliance date.

Discussions among our issuer member firms over the course of the past several months have produced credible and specific evidence that few non-hired NRSROs have requested access to the websites that arrangers are required to maintain under the Rule. In fact, in a survey of ASF members, we are aware of only a small handful of transactions in the entire U.S. ABS/MBS marketplace where an arranger’s website has been accessed. In the context of the U.S. market, we fully support the Commission’s interrelated goals as stated in the Adopting Release, namely to promote increased competition among rating agencies through issuance of unsolicited ratings, address conflicts of interest in credit ratings and ultimately improve ratings quality.⁸ Ultimately, the new requirements of the Rule have been responsible for only two ratings produced by non-hired NRSROs that our members are aware of. Despite this fact, arrangers of ABS continue to be burdened by tens of millions of dollars in initial and ongoing compliance costs in connection with the Rule, at a time when restarting the securitization markets in the U.S. and around the globe is still a critical component of economic recovery.

These concerns with respect to the effectiveness of the Rule are compounded by lingering international uncertainty regarding its potential future applicability to extraterritorial transactions. With respect to non-U.S. offerings, our members believe the Rule should not apply to the conduct of NRSROs or arrangers outside the U.S., absent a substantial effect in

⁵ For the May 14, 2010 AuSF letter, see:

[http://australiansecuritisation.com.au/docs/AuSF_submission_to_SEC - Rule 17g-5 May 14 2010.pdf](http://australiansecuritisation.com.au/docs/AuSF_submission_to_SEC_-_Rule_17g-5_May_14_2010.pdf).

⁶ For the June 25, 2010 AuSF letter, see:

[http://australiansecuritisation.com.au/docs/AuSF_submission_to_SEC Rule 17g-25 June 2010.pdf](http://australiansecuritisation.com.au/docs/AuSF_submission_to_SEC_Rule_17g-25_June_2010.pdf).

⁷ See *Order Granting Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g-5* (May 10, 2010), Exchange Act Release No. 34-62120, 75 FR 28825 (May 24, 2010) (“May 2010 Temporary Exemptive Order”). The May 2010 Temporary Exemptive Order exempts an NRSRO for a 6-month period from compliance with Rule 17g-5(a)(3) for ratings of structured finance products “where: (1) the issuer of the structured finance product is a non-United States (“U.S.”) person; and (2) the NRSRO rating the transaction has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S.”

⁸ Adopting Release at 63844.

the U.S. or on U.S. persons. We believe that defining the scope in this way would advance the Commission's objectives, provide sufficient certainty for market participants and regulators in other jurisdictions and avoid certain unintended consequences which might otherwise arise in the context of rated deals involving non-U.S. arrangers.

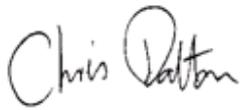
In addition, while each NRSRO defines the parts of its business that operate under the NRSRO designation (and, in theory, can therefore control the scope of its conduct that is subject to the rule), arrangers have no role in the NRSRO-designation process but incur significant burdens by operation of the rule simply because they engage the NRSRO to assign an initial credit rating. Because the rule operates to regulate the conduct of both NRSROs and arrangers, under general principles of fairness, the rule should not apply to conduct outside the U.S. absent a substantial effect in the U.S. or on U.S. persons.

In common with other Organisation for Economic Co-operation and Development ("OECD") jurisdictions, the federal securities laws of the United States focus on the regulation of offerings to U.S. persons. This guiding principle of local investor protection is reflected in the preamble to, and the findings set out at the start of, the U.S. Credit Rating Reform Act of 2006 and in the general mandate of the Commission itself. This principle suggests the Commission has a limited interest in regulating securities offered solely outside the U.S. and this is evidenced by certain existing provisions and practices, including the Regulation S safe harbor. Given this background, the application of the Rule to all credit ratings provided by an NRSRO or a registered affiliate, regardless of whether the relevant transaction involves a U.S. investor connection (i.e. via a U.S. offering), would be inconsistent from a policy perspective with the wider U.S. legislative and regulatory framework as well as principles of international comity.

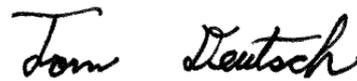
As a major, functioning international securitization market, the Australian market stands to be negatively impacted by the Rule. Three NRSROs currently operate in Australia and assign ratings to ABS issued to both non-U.S. persons and, on occasion, U.S. persons. Since its correspondence with the Commission earlier in the year, the AuSF has established a series of new public disclosure and reporting standards with the Australian Securities & Investment Commission ("ASIC") that are consistent, if not identical, to those implemented in the U.S. and will apply to issuers of Australian residential mortgage-backed securities ("RMBS") to provide investors and NRSROs with increased and more consistent information and data. These new International Organization of Securities Commissions ("IOSCO")-compliant standards will assist investors and others to form independent views on the creditworthiness of RMBS and aid the ability of non-hired NRSROs to provide ratings within the Australian jurisdiction.

We encourage the Commission to make permanent its exemption for NRSROs outside the U.S. from the requirements of the Rule absent a substantial effect in the U.S. or on U.S. persons. Although our organizations are supportive of the general goals of Rule 17g-5, we encourage the Commission to reevaluate the considerable costs of these amendments relative to their actual benefits. Since the financial crisis, securitization markets worldwide have been gradually recovering. These markets would benefit greatly from the removal of remaining uncertainties and impediments so that securitization might provide a beneficial role in financing international economies in the future. Please do not hesitate to contact Chris Dalton, AuSF CEO, at [REDACTED] or at [REDACTED], or Tom Deutsch, ASF Executive Director, at [REDACTED] or at [REDACTED].

Sincerely,



Chris Dalton
Chief Executive Officer
Australian Securitisation Forum



Tom Deutsch
Executive Director
American Securitization Forum