



March 26, 2009

VIA ELECTRONIC MAIL (rule-comments@sec.gov)

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: ● Re-proposed Rules for Nationally Recognized Statistical Rating
Organizations; Release No. 34-59343; File No. S7-04-09

Dear Sir,

The American Securitization Forum (“ASF”)¹ and the Securities Industry and Financial Markets Association (“SIFMA”)² are pleased to have the opportunity to comment on the Securities and Exchange Commission’s (“SEC’s”) recent re-proposed rules for Nationally Recognized Statistical Rating Organizations (“NRSROs”) contained in Release No. 34-59343 (the “Proposing Release”), published in the Federal Register on February 9, 2009.

¹ The American Securitization Forum 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. The ASF, therefore, is uniquely positioned to provide the Commission with comprehensive, balanced and practical recommendations reflecting a meaningful consensus among the various market participants, including investors and issuers. The 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. The ASF is an affiliate of the Securities Industry and Financial Markets Association.

² SIFMA brings together the shared interests of more than 650 securities firms, banks, and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington DC, and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. More information about SIFMA is available on its website at www.sifma.org.

Both of our organizations remain keenly interested in all aspects of credit rating agency reform, and as you know both ASF and SIFMA commented on the SEC's previous rules proposals for NRSROs which were published in mid-2008.

Following are our comments on the proposed amendments to Rules 17g-2 and 17g-5, as contained in the Proposing Release.

Proposed Amendments to Rule 17g-2

ASF and SIFMA firmly support additional disclosure requirements on ratings actions histories. Both of our organizations previously commented in support of requirements that each NRSRO make and maintain a publicly available and readily accessible record of its ratings actions. We support the use of XBRL format for this purpose, because that format will be more readily usable by investors. We believe that the totality of disclosure requirements, including transition and default statistics and ratings watchlists, can and will be instrumental in fostering greater transparency, competition and accountability. We continue to support the concept that the SEC should provide detailed guidance in terms of how the different rated securities should be grouped in this public record, and how different underlying asset classes should be identified, in order to assist the investor in comparing these public records of different NRSROs.

As re-proposed, the amended rule would require that the publicly available XBRL record of all ratings actions should apply to 100% of all rated securities, for issuer-paid ratings, where the initial rating was issued on or after June 26, 2007, on a 12 month delay basis. The re-proposal would thus expand the group of issuer paid ratings for which public disclosure is required for 100% of rated securities, to all securities initially rated in the future, as well as to all securities where the initial rating was issued on or after June 27, 2007. We generally believe that a minimum of three to five years of ratings history is necessary to begin to draw meaningful comparison among NRSROs. Accordingly we suggest that the final rule reference an earlier date (for example, a date in late 2004 or early 2005) so that, once the amended rule has been adopted and the applicable delay period has passed, and NRSROs commence publishing this information, at that time the body of data provided would be closer to the ideal of three to five years of history (for those NRSROs capable of satisfying this requirement). Given the more recent issues in the structured finance market, this starting point will allow for a greater and much more immediate examination of the performance for structured finance products specifically.

In fact one can easily argue that observers need a much longer set of data that provides visibility through two or more distinct economic cycles globally or within a specific industry in order to provide meaningful comparison. We however generally believe that three to five years of data would provide a reasonable and substantial starting point, when taken in conjunction with the disclosure requirement in the recently adopted amendments to Rule 17g-2, relating to disclosure of all ratings actions on a random 10% of all issuer-paid ratings on a six month delay basis where the specified concentration threshold is met.

We are sensitive to the potential risk to NRSROs revenue models from disclosure, both for issuer paid and subscriber paid NRSROs. Our members however indicate that they are most focused on current ratings, immediate history and the associated analysis and commentary. While the XBRL format of disclosure for such historical ratings data allows for a relative ease of data sorting, modeling and manipulation for sophisticated users, the ease of access and use provided by NRSRO services directly or indirectly on a current basis should remain substantially desirable and thus provide a buffer to revenue streams. We therefore suggest that a six month lag would seem an appropriate balance between the private commercial interests and the wider public interests. We believe that a six month lag would be appropriate for both the 10% disclosure requirement as adopted (paragraph (d)(2)), and the proposed 100% disclosure requirement (paragraph (d)(3)).

ASF and SIFMA are of the view that the provisions of Rule 17g-2 discussed in this section - both paragraph (d)(2) as adopted and paragraph (d)(3) as proposed - should apply equally to both issuer and subscriber paid ratings. An important check on the value and utility of credit ratings is the ability to scrutinize the accuracy, integrity and reliability of those ratings over time, including via performance history reporting. This is as important with subscriber paid ratings as it is with issuer paid ratings. The stated purpose of this amendment - "to provide users of credit ratings, investors and other market participants and observers with the maximum amount of raw data with which to compare how NRSROs subject to the rule initially rated an obligor or security and, subsequently, adjusted those ratings, including the timing of the adjustments" - is equally if not more important for unsolicited ratings, whether they be paid for by issuers or subscribers. In order to give full effect to this goal, and to be able to compare ratings stability over time as between issuer paid ratings and subscriber paid ratings, the data for subscriber paid ratings would have to be available as well. From our perspective, subscribers to subscriber paid ratings services utilize such services as another tool for evaluation and comparison of credit ratings. We are not aware that it has been demonstrated conclusively that NRSROs with subscriber paid models have exhibited inherently different behavior in the analysis of initial ratings or the timing of ratings modifications, and it is not necessarily prudent to expect such would always be the case in any event.

Some might argue that there may be added conflicts inherent in the issuer pay model; however we do not believe that a rule that applies only to issuer paid ratings or provides an exemption for subscriber paid ratings would be consistent with the full spirit and goals of the rules and the public interest. One might also argue that disclosure of subscriber paid ratings could inordinately impact the revenue model of such businesses. Taking into account the difference in the revenue models, we recommend that a universal six month lag be applied - for both issuer paid and subscriber paid ratings under both the 10% disclosure requirement as adopted (paragraph (d)(2)), and the proposed 100% disclosure requirement (paragraph (d)(3)) - as we believe such timeframe is sufficiently long so as to substantially cushion any revenue impact. We believe that the most reasonable outcome is for a uniform treatment of all firms designated as nationally recognized and whose ratings are permitted to be used for regulatory purposes. Accordingly, both the 10%

disclosure requirement as adopted (paragraph (d)(2)), and the proposed 100% disclosure requirement (paragraph (d)(3)), should apply to issuer and subscriber paid ratings alike.

It has been our experience that all NRSROs from time to time issue unsolicited ratings for comparative purposes, to round out coverage and to build a track record for particular companies. NRSROs using an issuer paid model have in fact been known to make unsolicited ratings available for free. Unsolicited ratings are indeed susceptible to conflicts of interest and we support the inclusion of any publicized unsolicited ratings in all aspects of the SEC's disclosure requirements. We suggest that no distinction be made among issuer paid, subscriber paid or unsolicited ratings, in any aspect of the recently adopted and re-proposed amendments to Rule 17g-2. We also recommend that subscriber and unsolicited ratings also be included in the determination of the 500 thresholds for all NRSROs.

We lastly note that the rules do not seem to specify how often the disclosures are updated. We suggest that a specific periodic update requirement be adopted.

Re-Proposed Amendments to Rule 17g-5

ASF and SIFMA greatly appreciate the manner in which our concerns about the original proposed Rule 17g-5 have been addressed in the re-proposed rule. The rule as originally proposed would have required disclosure of all information provided to a NRSRO by a transaction participant that is used by the NRSRO to determine the initial credit rating or that is used for surveillance purposes. In the ASF's July 25, 2008 letter, we raised substantial concerns about this proposal, in that it would require disclosure of proprietary information, would mandate disclosure well in excess of what is required under Regulation AB, and would convert confidential business communications into offering communications. Instead, we advocated an alternative approach, pursuant to which information could be provided to non-engaged NRSROs upon request and on a confidential basis. The re-proposed rule in broad brush follows this approach. (As used in this letter, "non-engaged" NRSROs are ones that are not engaged by the issuer, sponsor or underwriter for the security being rated, but instead issue ratings that are paid for by subscribers, or otherwise are issuing an unsolicited rating on a given security.)

However, we continue to have some concerns about the breadth, scope and expense (relative to benefits) of the re-proposed amendments to Rule 17g-5, summarized as follows and discussed in more detail below:

1. We continue to be concerned about any proposed requirements that would apply only to structured finance products, or that place an undue burden on structured finance products as compared to other types of rated securities. We note that in ratings for other types of securities, such as corporate and municipal securities, NRSROs use non-public information and may be compensated by the

issuer, thus raising the same conflict of interest issues that the re-proposed rule seeks to address.³

2. The scope of information required to be made available to non-engaged NRSROs should be narrowly and specifically defined, in order to avoid a chilling effect on communications.
3. We believe that the duty to make the information available should fall on the engaged NRSRO directly.
4. We believe that as to information provided in connection with an initial rating, only the final information should be made available to non-engaged NRSROs. We believe that the goal of providing information on a real time basis to facilitate unsolicited ratings concurrently with issuance is not necessary, as an unsolicited rating can only be made after the final information is available, and should be able to be made promptly based solely on the final information.
5. In line with these comments, we believe that using a secure website to make the information available to non-engaged NRSROs is not cost-effective, and also creates substantial and undesirable security risks.
6. Non-engaged NRSROs that access information under this rule should be accountable for any misuse of the information, and should be subject to data safeguard standards.
7. Non-public personal financial information should be excluded from any data transfer to an NRSRO which is not engaged unless such non-engaged NRSRO provides a specific Gramm-Leach-Bliley confidentiality agreement or undertaking.
8. Finally, we continue to believe that the primary goal should be to take actions that restore confidence in credit ratings generally, and that regulatory actions that encourage unsolicited ratings should appropriately consider the limitations inherent in such ratings.

We believe that the scope of the information required to be made available to non-engaged NRSROs under Rule 17g-5 in connection with structured finance products should be limited to information that meets all of the following criteria:

- a. information that is provided by either the issuer, sponsor or underwriter,

³ We refer to the prior comment letters on Release No. 34-57967 from ASF dated July 25, 2008, and from SIFMA dated July 24, 2008, and also to ASF's letter to Mr. Erik Sirri dated May 21, 2008 regarding proposed ratings scale changes. These letters commented on certain proposals that would apply only to ratings of structured finance products, but as part of a broader discussion supporting numerous proposals to improve transparency in the ratings process and provide better disclosure about the meaning and limitations of credit ratings.

- b. information that is in written form,
- c. information that is required to be provided pursuant to requirements of an engaged NRSRO in connection with either an initial credit rating or in connection with credit rating surveillance, and
- d. either:
 - i. if in connection with an initial rating, relates specifically to the characteristics of the final asset pool underlying the transaction or to the final structure of the transaction, or
 - ii. if in connection with surveillance, relates specifically to the characteristics and performance of the asset pool underlying the transaction.

We believe that the rule should be limited to specific categories of information, and that the categories should be limited to information specifically about the assets underlying the transaction and the structure of the transaction, or otherwise to a standardized list of information. The rule should not extend for example to general background information, such as historic information on an issuer's securities that is compiled by a NRSRO, or information derived from diligence or other investigative activities conducted or reviewed by the NRSRO. An engaged NRSRO may obtain generic information from time to time about an originator's lending programs, including underwriting guidelines, quality control procedures and asset document forms. This may include the results of onsite visits and meetings. This information may result from specific inquiries or from an interactive process. With respect to master trusts, the oldest of which have been in operation for many years, the full extent of background and historic information maintained by an engaged NRSRO would be exceptionally voluminous. As such, the scope and content of such background information is non-standardized and reflects the NRSROs judgment of what it should know in the context of providing a rating on a solicited basis with access to the issuer. We are concerned that a broader requirement to provide background information could have the effect of substituting the engaged NRSROs judgment for that of the non-engaged NRSRO, in terms of deciding what information is necessary to support a rating.

Notwithstanding our view that the rule should be limited to information about the specific assets in the transaction and the structure of the transaction, we believe that the need for a rule providing greater access to even these types of information will be somewhat offset by anticipated improvements in disclosure and transparency going forward. For example, the uniform data fields proposal within ASF's Project RESTART is expected to result in substantial improvements in the availability, utility and sufficiency of information about assets underlying securitizations, both at the time of offering and on an ongoing basis.

As noted above the rule should be limited to information in written form. The rule should not capture information provided to an NRSRO in verbal form, and also should not include informal communications such as email messages. Otherwise, to the extent

that in order to fulfill a requirement to disclose, all verbal communications would have to be memorialized in writing, the ASF would be concerned about a “chilling” effect on verbal communication, which would not improve the flow of information between a CRA and the issuer and other transaction participants (including investors). We believe that this limitation should be expressly made. We appreciate however the statements in the Proposing Release to the effect that the SEC intends the rule to apply only to written information, and we agree that information that otherwise would be provided in written form should not be provided orally in order to avoid the application of the rule.

The re-proposed rule imposes the duty to capture and provide this information on the “issuer, sponsor or underwriter” of each security for which a solicited rating is to be obtained. We note that, as drafted, the language is unclear as to whom the duty falls upon. We are also concerned that, if the duty to disclose is placed on the arranger, there will be direct or indirect pressures to customize or enhance the information provided in order to meet the desires of the non-engaged NRSROs accessing this information. We believe this would create unacceptable operational burdens, and would also unfairly give the non-engaged NRSRO the benefits of being hired without the corresponding burdens.

Our major concern in this regard, however, is that the duty to capture and provide this information should be imposed on the engaged NRSRO, and not on the arranger.⁴ We believe that the essential purpose of the re-proposed rule should be to level the playing field with respect to transaction specific information as between engaged and non-engaged NRSROs, and that this amounts to an information sharing problem where the solution can be found by requiring information sharing among the NRSROs. We do not see any need to impose administrative or compliance burdens on issuers, sponsors or underwriters to achieve this objective. Moreover, to the extent that (contrary to our comments above) the final rule uses language such as “information... [provided to the NRSRO] for the purpose of determining the initial credit rating...” rather than a standardized list of types of information, we are concerned that **only** the engaged NRSRO can make the determination as to which information that has been provided to it falls within the requirement.

As noted above, the duty to provide information in connection with the initial credit rating should be limited to the final assets and the final structure. We believe that there is no value in providing a non-engaged NRSRO with such information prior to the time when it is finalized, because it is subject to change. In any event, a non-engaged NRSRO’s rating could not be issued prior to the time that the final asset and structure information is available, and that NRSRO’s ability to promptly issue a rating when the final information is available would not be enhanced by having earlier versions of the information that are incomplete or subject to change. Accordingly, we see no justification for imposing on the information provider a duty to provide such information prior to the time when it is final.

⁴ We note in this context that NRSROs generally disagree with this recommendation, and instead believe that any such duty to capture and provide information to non-engaged NRSROs should fall upon the issuer or arranger of the related transaction.

We believe that the information required under this rule should be provided directly to an NRSRO that makes the required certification as described in the Proposing Release, upon request of that NRSRO. This information should be provided in the same format in which it was received by the engaged NRSRO. Generally, the information will be in the form of electronic documents and spreadsheets. Even if voluminous, this information can readily be provided via email or on DVDs.

We do not see any value in requiring this information to be provided via secure website, given the ease and security with which it can be provided directly by electronic means. The website concept in the re-proposed rule is reminiscent of the provisions in Regulation AB for providing static pool data via website. However, this context is markedly different, particularly in that there is no intent to make the information public. We are concerned that using a website approach in this context, even though password protected, would nevertheless raise data security concerns that can easily be avoided.

Accordingly, we recommend that the re-proposed amendments in paragraph (a)(3) of Rule 17g-5 be revised substantively to:

- * eliminate any requirement imposed on the issuer, sponsor or underwriter,
- * impose on engaged NRSROs the obligation to maintain a password protected website listing pending initial credit ratings as contemplated in paragraph (i) but without any reference to any website maintained by an issuer, sponsor or underwriter,
- * impose on engaged NRSROs the duty to provide access to the NRSRO's website to other NRSROs who provide the paragraph (e) certification,
- * revise the description of the information required to be provided (as it appears in paragraphs (a)(3)(iii)(C) and (D)) to that set forth above, and
- * impose on engaged NRSROs the duty to provide, directly to other NRSROs who provide the paragraph (e) certification, and upon request of any such NRSRO as to any specific security, the information required.

We are also concerned that the reference in the proposed paragraph (e) certification to Rule 17g-4, which would require the non-engaged NRSRO to have appropriate policies and procedures to protect all material nonpublic information, does not specifically reference protection of personal nonpublic information for consumers in accordance with standards under the Gramm-Leach-Bliley (G-L-B) Act and applicable regulations thereunder. In particular, when engaging a NRSRO, an issuer has an opportunity to inquire as to whether the NRSRO has appropriate data safeguards meeting G-L-B standards, but would not have such an opportunity when the data is accessed by a non-engaged NRSRO. To address this point, we recommend that the paragraph (e) certification be revised to include language to the effect that the signer certifies that it: a) will hold all personal nonpublic information in accordance with the limitations of 16 CFR Section 313.11, and b) has in place and will maintain data safeguards including the elements required for service providers under 16 CFR Part 314.

Finally, we believe that any regulations relating to unsolicited ratings should err on the side of being minimally invasive, for the reason that the goal of facilitating unsolicited ratings is itself problematic. We have significant concerns that unsolicited ratings will not have the benefit of the full review procedures that a NRSRO would normally undertake if it were engaged to rate the security. The non-engaged NRSRO would not have the benefit of onsite visits, meetings, conference calls and other informal communications with the issuer and other transaction participants. Moreover, the non-engaged NRSRO may require specific types of information on the underlying assets (e.g., specific data fields) that may not have been required by the engaged NRSRO. As between a non-engaged NRSRO and an engaged NRSRO, there is inevitably an information gap that is inherent in the non-engaged approach and that the re-proposed rule cannot bridge.

As a result, the non-engaged NRSRO may have to make adverse assumptions in light of not having complete information that it would normally require. This in turn would lead to reduced accuracy in the unsolicited ratings, which would not serve the interests of investors. Investors would also be harmed to the extent that unsolicited ratings of securities that they had purchased were to be published, and such ratings were to be lower than the initial, solicited ratings.⁵ While we agree that any barriers to free competition in the ratings arena should be removed, and that the harmful effect of any conflicts of interest should be prevented, we note that the ultimate goal is to improve the quality, accuracy and reliability of credit ratings, not the quantity of ratings.

In the current environment, and until such time as normal market conditions resume, restoring credibility to the credit rating process in the near term is an essential and primary goal. This is illustrated by the provision within the recently announced Term Asset-Backed Securities Loan Facility program, under which securities must have a rating in the highest rating category from two or more “major NRSROs” to be eligible, and are ineligible if they have a rating below the highest rating category from a “major NRSRO”. To the extent that non-engaged NRSROs issue larger numbers of credit ratings and these ratings are below those of the engaged or “major” NRSROs, this will not support the market recovery, and may even interfere with the smooth functioning of programs such as TALF. Credit rating agency reform should focus first and foremost on whatever will be most effective in restoring credibility to credit ratings.

⁵ Please see ASF’s comment letter on Release No. 34-57967, dated July 25, 2008, for a further discussion of the limitations of unsolicited ratings, in the context of proposing sharing of information with NRSROs issuing unsolicited ratings.

ASF and SIFMA appreciate the opportunity to express our views on these issues under the re-proposed rules. Should you have any questions or need additional information, please contact one of the undersigned or George Miller, Executive Director of ASF, at 212.313.1116, or Sean Davy, Managing Director of SIFMA, at 212.313.1118.

Very truly yours,



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