



March 26, 2009

Via E-Mail

Elizabeth Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: S7-04-09 - Re-Proposed Rules for Nationally Recognized Statistical Rating Organizations

Dear Secretary Murphy,

We appreciate the opportunity to comment on the U.S. Securities and Exchange Commission's ("SEC" or "Commission") re-proposed rules governing Nationally Recognized Statistical Rating Organizations ("NRSROs").¹ Rating and Investment Information, Inc. ("R&I") generally supports the Commission's efforts to address concerns about the integrity of NRSROs' credit rating procedures and methodologies, however, for the reasons described below, R&I disagrees with certain required elements of the re-proposed rules.

A. *Re-Proposed Rule 17g-5(a)(3)*

Re-proposed Rule 17g-5(a)(3) would require an NRSRO that issues or maintains "a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument" to maintain a list of "each structured finance security or money market instrument for which it currently is in the process of determining an initial credit rating in chronological order and [to] identif[y] the type of security or money market instrument, the name of the issuer, the date the rating process was initiated and the internet web site address where the issuer, sponsor or underwriter of the security or money market instrument represents that [certain enumerated information] can be accessed" ("Rule 17g-5(a)(3) Information") on a password protected web site.² The Commission has proposed that an NRSRO provide other NRSROs access to its password protected website, provided that such other NRSROs have completed certain enumerated annual certifications. Further, each NRSRO must obtain from the arranger of each structured finance security or money market instrument certain representations that the arranger will maintain certain information on a password protected website and make such information available to other NRSROs that have completed

¹ See Securities Exchange Act Release No. 59343 (Feb. 2, 2009), 74 FR 6485 (Feb. 9, 2009) ("Re-Proposed NRSRO Rules").

² *Id.* at 6493-6494.

the aforementioned annual certifications.³ The proposed rule permits an NRSRO “to rely on the representations if the reliance was reasonable” which in turn would “provide the NRSRO with a safe harbor if the arranger did not act in accordance with the representation.”⁴

1. Foreign Offerings to Non-U.S. Persons

Offerings by foreign issuers to non-U.S. persons, such as those that fall within Regulation S,⁵ (“Foreign Offerings”) are not subject to the U.S. federal securities laws. The Commission, however, has not limited the re-proposed amendments to Rule 17g-5(a)(3) to offerings made to U.S. persons. R&I believes that requiring an NRSRO and an arranger of a structured finance security or money market instrument to disclose information to other NRSROs regarding Foreign Offerings is beyond the purview of the federal securities laws. Furthermore, if an NRSRO and the arranger of a structured finance security or money market instrument were to make such disclosures for Foreign Offerings, it would raise numerous questions, including the issues below.

2. Information Disclosure System in Japan

If re-proposed Rule 17g-5(a)(3) is adopted by the Commission, as proposed, arrangers of Japanese securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument (“Japanese Structured Products”), would become subject to disclosure requirements, to which they are not legally bound, simply due to their decision to hire an NRSRO to rate their securities. R&I is concerned that imposing such U.S. disclosure requirements on Japanese Structured Products, which are not subject to the U.S. securities laws, would negatively impact the Japanese structured finance market.

In Japan, requisite disclosures associated with financial products, such as who may disclose information, what may be disclosed, and the method and timing of disclosures, are prescribed by certain Japanese laws and regulations, including the Financial Instruments and Exchange Law, the Trust Business Law and certain supervisory policies for each type of offering and product (“Japanese Laws”). The disclosures proposed under re-proposed Rule 17g-5(a)(3), however, do not necessarily conform with the requirements under these Japanese Laws. In order to disclose the 17g-5(a)(3) Information required by re-proposed Rule 17g-5(a)(3), certain legal and administrative conflicts would need to be resolved. For example, under the Financial Instruments and Exchange Law, private offerings are not required to disclose their security registration statements or annual security statements, unlike public offerings where such documents would be disclosed. Further, Japanese Laws do not require the disclosure of sales description materials to qualified institutional investors (“Tekikaku- Kikan-Toshika”). Requiring

³ *Id.* at 6494.

⁴ *Id.*

⁵ Regulation S is a safe harbor that specifies certain circumstances under which offerings are deemed to occur outside the United States, and therefore not subject to the U.S. securities laws.

disclosure of the Rule 17g-5(a)(3) Information for Japanese offerings would be disruptive to the Japanese disclosure regime and regulatory system.

For the aforementioned reasons, R&I would likely have difficulty obtaining representations from arrangers of Japanese Structured Products to agree to disclose the requisite Rule 17g-5(a)(3) Information, as they are under no legal obligation to provide such information.

3. Japanese Structured Finance Market

The performance of the structured finance market in Japan has been far better than that of corporate bonds, based on default ratio analysis and rating transition matrixes, and products such as sub-prime mortgage backed securities do not exist in Japan. The structured finance market in Japan developed as an alternative source of funding to bank loans for relatively small originators to conduct private offerings and is functioning well. The development of the structured finance market has played a significant role in altering the structure of the capital markets in Japan, which, traditionally, was heavily skewed toward bank loans.

The originators of Japanese Structured Products, on a confidential basis, provide a rating agency with almost the same level of information that they would provide to a bank. The credit agency will then perform its due diligence and conduct its stringent credit rating evaluation. If originators of Japanese Structured Products are required to provide such information to other NRSROs, in addition to the NRSRO they hired, the originators would have to make confidential business information available for the review of NRSROs, with which it does not have a business relationship. Although such NRSROs are obligated to sign a certification agreeing to keep such information confidential, originators could become unwilling to disclose such sensitive business information on a medium such as the internet. This could lead to lower quality of solicited ratings.

Moreover, if re-proposed Rule 17g-5(a)(3) is adopted by the Commission, as proposed, R&I believes that many small originators would be forced to abandon fund raising in the structured finance market due to the prohibitively high systematic and administrative costs associated with disclosing the Rule 17g-5(a)(3) Information. The departure of such small originators from the structured finance market in Japan would negatively impact the future development of the capital markets and lead to the decline of the overall structured finance market. R&I respectfully proposes that Foreign Offerings be explicitly exempted from the re-proposed Rule 17g-5(a)(3) disclosure requirements.

B. Re-Proposed Rule 17g-2(d)(3)

Re-proposed Rule 17g-2(d)(3) would require NRSROs to disclose their “ratings history information for 100% of their current issuer-paid credit ratings in an XBRL format” for “issuer-paid credit ratings determined on or after June 26, 2007” twelve (12) months after a credit rating action is taken (“Rule 17g-2(d)(3) Disclosures”).⁶ R&I currently makes such historical rating actions available to paid subscribers (“Historical Database”). R&I believes that the Rule 17g-

⁶ See NRSRO Re-Proposed Rules at 6488.

2(d)(3) Disclosures would negatively impact sales of its Historical Database, which would reduce the percentage of their revenues from its subscriber business and result in NRSROs becoming more reliant on income from issuers - a result the Commission would not want. R&I believes that its database sales business would not be as negatively impacted if the Commission extended the timing of the Rule 17g-2(d)(3) Disclosures to at least eighteen (18) months. R&I does not believe that an eighteen (18) month delay for the Rule 17g-2(d)(3) Disclosures would serve as an impediment to verification of credit ratings by third parties.

Please do not hesitate to contact me (htanaka@r-i.co.jp) or Mr. Masahiro Kambe (mkambe@r-i.co.jp) with any questions you might have.

Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Hidetaka Tanaka".

Hidetaka Tanaka
Senior Executive Managing Director
Rating and Investment Information, Inc.