

1 November 2017

Harriett Orol, Branch Chief, Office of Credit Ratings
Kevin Vasel, Attorney-Advisor, Office of Credit Ratings
Kevin O'Neill, Assistant Director, Office of Credit Ratings
Randall Roy, Deputy Associate Director, Division of Trading and Markets

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Dear Sirs

Re: Order granting temporary conditional exemption for nationally recognised statistical rating organisations from requirements of Rule 17g-5 under the Securities Exchange Act of 1934; Request for permanent exemption or further two year extension of temporary conditional exemption

On behalf of the membership of the Association for Financial Markets in Europe (“AFME”)¹, and further to our previous correspondence in this matter², we reiterate our request for the temporary conditional exemption from the requirements of Rule 17g-5 on non-U.S. offered transactions to be made permanent or, as an alternative, for a further two year extension of the temporary conditional exemption.

In this regard, once again:

- We respectfully submit that the European authorities are best placed to assess the requirements which should apply in respect of the structured finance markets in Europe and to ensure that any adopted requirements appropriately reflect the wider regulatory framework. As explained in previous correspondence, since the introduction of Rule 17g-5 the EU authorities have introduced several requirements

¹ AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (“GFMA”) a global alliance with the Securities Industry and Financial Markets Association (“SIFMA”) in the US, and the Asia Securities Industry and Financial Markets Association (“ASIFMA”) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

² See our original letter to the Commission dated 11th November 2010 and most recently our letter to the Commission dated 10th November 2014.

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to address perceived issues in respect of the “issuer-pays” model in a securitisation context.

- Specifically, securitisation disclosure requirements have been introduced first through Regulation (EU) No 575/2013 (the “Capital Requirements Regulation”)³, then through Regulation (EU) No 1060/2009 (the “Credit Rating Agencies Regulation”)⁴ and also through other now well established disclosure and transparency related initiatives, which have been demonstrated to be efficient. For example, the **European DataWarehouse**, launched in 2011, holds a wide range of information on structured finance securities, which is required by the European Central Bank in order for the securities to be eligible collateral for the purposes of their liquidity-providing operations. Similar transparency requirements have also been established for some years now by the Bank of England.
- More recently, the most important single regulatory development has been the proposal by the European Commission of September 2015 for a “Regulation ... laying a general framework for securitisation and creating a European framework for simple, transparent and standardised securitisation ...” (the “New Securitisation Regulation”). This regulation was adopted by the European Parliament on 26 October 2017 and will apply from 1 January 2019 in general. Detailed disclosure obligations will apply under the New Securitisation Regulation and will replace the disclosure requirements provided for under the Capital Requirements Regulation and the Credit Rating Agency Regulation described above. In particular, the New Securitisation Regulation will require (inter alia) that certain information designed to allow investors to conduct thorough due diligence on securitisation transactions, including loan-level data and transaction documents, be made available to investors, potential investors and the relevant regulators.
- While the legislation and initiatives described above take a different approach from Rule 17g-5, the general activity being regulated (namely the disclosure of information relating to securitisations) is the same. The EU authorities have also implemented provisions under the Credit Rating Agency Regulation requiring two credit ratings be obtained in respect of securitisations in scenarios where perceived issues in respect of the “issuer-pays” model arise.
- As noted in our previous correspondence, in Europe compliance with Rule 17g-5 also raises significant data protection and bank confidentiality considerations under European laws.
- We note that the U.S. federal securities laws focus on the regulation of offerings to U.S. persons. 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 harbour and the Goodwin Proctor no-action letters. Therefore, the application of Rule 17g-5 to all credit ratings provided by a

³ See Article 409 thereof.

⁴ See Article 8(b) thereof. N.B. both Article 409 above and Article 8b are expected to be repealed by the New Securitisation Regulation and replaced with new enhanced provisions for disclosure.

Nationally Recognized Statistical Rating Organization (NRSRO) regardless of whether the relevant structured finance product transaction involves a U.S. investor connection (i.e. via a U.S. offering) is inconsistent with the wider U.S. legislative and regulatory framework.

AFME members who are European originators / issuers have gained more experience of complying with Rule 17g-5 where this has been necessary as part of an offering into the U.S. Such compliance, while burdensome and adding to cost, has been accepted.

However, where the relevant securities are offered solely outside of the U.S., AFME members continue to believe that a permanent exemption from Rule 17g-5 is appropriate. As an alternative, we respectfully request a further two year extension of the temporary conditional exemption.

Yours faithfully

A handwritten signature in black ink that reads "Richard H. Hopkin". The signature is written in a cursive, slightly slanted style.

Richard Hopkin
Managing Director & Head of Fixed Income

Cc: Katherine Hsu, Chief, Office of Structured Finance