

Email

Ms Mary Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
schapiro@sec.gov

Brussels, 12 May 2010

Subject: SEC rule 240 17 (g) 5 – implications for European securitisation issuers

Dear Chairman Schapiro,

The European Banking Federation (EBF) is writing to you to address potential concerns around the amended SEC rule 240 17 (g) 5. The EBF understands that this rule requires that all information made available to one Nationally Recognized Statistical Rating Organization (NRSRO) about a securitisation issue, for the purpose of mandating the NRSRO with the formulation of a credit rating, shall also be made available to all other NRSROs in order to enable the creation of alternative ratings. The rule itself applies to NRSROs and their employees, who are required to ensure that the issuer, sponsor or underwriter makes the necessary arrangements *via* a password-protected internet website. This rule would apply from 2 June 2010.

The wording of the SEC rule does not make it explicit whether it would include securities issued from outside the US. However, as it directly applies to NRSROs and does not foresee clear exemptions for non-US issued securities, some NRSROs have expressed the view that the rule is not limited to US issuers or to issues explicitly addressed to US investors, but would also include, for example, European issuers; and even when issues are not intended to be marketed in the US.

The EBF fully appreciates and shares the SEC's concerns about conflicts of interest and the intention to increase competition between rating agencies. In the process of negotiating the EU Regulation on rating agencies, European banks indeed made themselves a number of proposals to achieve these same objectives.

However, European issuers are concerned about being caught by the SEC rule for the three main reasons of a) potential conflicts with data protection and bank secrecy law, b) potential conflicts with the EU Rating Regulation, and c) administrative considerations.

European issuers did not expect to become subject to this SEC rule, indirectly through their relations with credit rating agencies and did therefore not comment on the proposed SEC rules during the consultation period. EU issuers also assume that such a wide scope of application,

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which would include issues without any relation to the US, was not intended. If the rule is to apply to EU issuers, however, potential conflicts with EU and national law remain to be analysed, and it is likely that a number of according adaptations would be required.

In addition, European issuers have not had the time to make the necessary administrative preparations which would allow them, or the NRSROs dealing with them, to meet the new requirements from 2 June onwards. If these concerns and uncertainties remain unsolved, they would impose an additional harmful hurdle on the already suffering securitisation market.

In light of these considerations, the EBF would respectfully request the SEC to clarify the rule in respect of non-US issuers and to consider explicitly exempting from the new rule securities issued outside the US. The EBF suggests that an exemption should at least apply for an interim period of time to allow the further consideration of the above-mentioned concerns, as well as giving European issuers a reasonable amount of time to make the necessary administrative preparations. In the view of European banks this period of time should also be used to analyse and coordinate the interaction between the two sets of rating agency rules in a comprehensive manner.

We hope that the concerns of European banks and these suggestions will find your consideration and look forward to the SEC's conclusions in their respect. Please be aware that a copy of this letter will be shared with the European Commission and the Committee of European Securities Regulators.

Yours sincerely,



Guido RAVOET

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