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14 May 2010

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

**Copy to**

Mr Greg Medcraft  
Australian Securities and Investments Commission  
1 Martin Place  
Sydney NSW 2000

The Honourable Chris Bowen MP  
Minister for Human Services, Financial  
Services, Superannuation and  
Corporate Law  
M1/24  
Parliament House  
Canberra ACT 2600

Mr. Geoff Miller  
The Australian Government Treasury  
Langton Circuit  
Parkes ACT 2600

**Amendment to the Rules for Nationally Recognised Statistical Rating Organisations;  
Rule 17g-5: Requirements for credit ratings in respect of foreign issuer transactions  
that do not involve a United States offering**

Dear Mr. Roy,

This submission is made by the Australian Securitisation Forum ("**AuSF**"). The AuSF was formed in 1989 to promote the development of securitisation in Australia. As the peak industry body representing the securitisation 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 securitisation in Australia and aspects of the Australian securitisation industry.

The AuSF has previously made various submissions to the Securities and Exchange Commission (the Commission) in relation to the effect of US laws and regulations on its members.

The AuSF wishes to raise its concern regarding certain amendments adopted by the Commission with respect to the rules governing the conduct of Nationally Recognised Statistical Rating Organisations (NRSROs) under the Securities Exchange Act of 1934. The new Rule 17g-5(a) (3) (iii) (the Rule) requires arrangers of structured finance transactions seeking a rating from a NRSRO to provide information to a website accessible by other NRSROs. Consistent with other laws that regulate the offering of financial products (such as securities laws), the AuSF submits this Rule should be clarified such that it applies to structured finance product offered only to United States (U.S.) persons. Specifically, we seek an exemption with respect to the Rule for credit ratings provided in respect of non-US transactions which involve an offering of a structured product to non-U.S. persons only.

We have set out below the reasons why we believe it is appropriate that the Rule only apply to structured products offered to persons subject to the jurisdiction of the United States or at least that an exemption be given for non-U.S. transactions. The AuSF supports the September 2009 recommendations of IOSCO with respect to securitisation and is working with the Australian Securities and Investment Commission (ASIC) to implement such recommendations as they apply to the Australian securitisation market, including the regime that has been introduced in Australia by ASIC for the licensing and regulation of NRSROs in Australia. We also support the intention of the G20 to facilitate changes in securitisation markets to support recovery of the markets and provide ongoing finance for economic development and growth.

We appreciate the opportunity to raise the concerns and views of the Australian market on the Rule and wish to thank the Commission in advance for its serious consideration of the matters contained herein. We would be happy to discuss our views and comments with the Commission at a convenient time.

#### **Exemption for Australian and non-U.S. offered transactions**

In common with other 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. Consistent with this, it is clear that the Commission has a limited interest in regulating securities offered solely within Australia or more generally outside the U.S. and this is evidenced by certain existing provisions and practices, including the Regulation S safe harbour. Given this background, it is arguable that 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) - is inconsistent from a policy perspective with the wider U.S. legislative and regulatory framework, and the legislative and regulatory framework that exists in Australia in respect of these matters.

We recognise the intent of the Commission in adding the new requirements to the Rule is to increase the number of credit ratings assigned to a structured finance product and, in particular, to promote the provision of credit ratings by NRSROs which are not hired by the arranger. In this regard, the AuSF considers the requirements may be relevant in the context of recent rating

experience in the U.S market, but are not relevant in the context of the experience in the Australian market.

The AuSF respectfully submits that the regulation of the affiliates of NRSROs in Australia, and in particular for transactions that do not involve the offering of a structured finance product to US persons, is best assessed and addressed by local regulators such as ASIC rather than by the Commission. Moreover, while we understand the Commission has undertaken an impact assessment in respect of the Rule based on inputs and assumptions relevant for U.S. established NRSROs and arrangers, it is not clear that those inputs and assumptions would apply equally in the case of NRSROs and arrangers established in Australia and elsewhere. In general, the Rule may operate in a manner which is disruptive to Australia laws and market practices.

In this regard, we note that the global application of the Rule gives rise to a number of potential issues and concerns. Below is a summary of certain key considerations.

- ***Primacy of Australia's regulatory regime should be recognised*** - the application of the Rule in respect of a credit rating provided by an NRSRO and/or a registered affiliate, regardless of whether the relevant transaction involves a U.S. offering, does not take account of regulatory or other requirements which may already be in place in Australia (or any non-U.S. jurisdictions) with respect to NRSROs and/or the disclosure of information in respect of structured finance products. ASIC introduced in January this year a requirement for NRSROs operating in Australia to hold an Australia Financial Services License (AFSL) and be subject to the regulations and requirements for holders of an AFSL. An AFSL governs the operation of the locally incorporated subsidiaries of the NRSROs conducting business in Australia.

- ***Conflict with Australian laws*** - compliance with the disclosure requirements indirectly imposed on non-U.S. resident arrangers via the Rule would give rise to certain non-U.S. legal considerations and possibly to certain legal conflicts. For example, it is not clear that compliance with the Rule by non-U.S. resident issuers would not conflict in certain circumstances with certain laws in Australia, including its privacy, corporations and trade practices (anti-trust) laws. Further legal analysis is required to determine whether the publication of asset-level information (such as that commonly provided to an engaged NRSRO) via a website which could be accessed by organisations incorporated and registered outside Australia does not breach Australian law.

In general, it should not be assumed that compliance with the Rule would not conflict with local laws applicable to non-U.S resident arrangers with respect to information disclosure. Finally, we note that certain deal information may be subject to contractual restrictions on disclosure which may extend to non-hired NRSROs (e.g. certain documentation in respect of the underlying assets, advisor comfort letters and opinions, etc.).

• **Increased uncertainty for Australian market participants and potential implications for access to central bank (Reserve Bank of Australia) liquidity operations** — the global application of the Rule may have a heightened impact for Australian investors and market participants due to the potential intersection of the Rule with other requirements which may be relevant to such participants (and which are unlikely to be relevant to U.S. participants).

During the financial crisis Australia's central bank, the Reserve Bank of Australia (RBA), provided liquidity support to licensed banks through repo facilities. This included repo facilities for on-balance sheet mortgage-backed securitisations which were rated by the three NRSRO designated credit rating agencies operating in Australia. A requirement for information relating to these transactions and their rating to be posted on a Commission mandated website would have been unnecessary, added cost and possibly impeded the timeliness of the RBA's action in providing provide liquidity support to Australian banks during the liquidity crisis.

The AuSF is also concerned that the information posted to the Commission's mandated website may allow NRSRO's who are not licensed by ASIC to issue unsolicited ratings on Australian transactions causing confusion and uncertainty amongst local market investors. Clearly this would be an unhelpful outcome and presumably an unintended consequence of the Rule.

In particular the AuSF is concerned about the implication for AUD asset-backed commercial paper programs (ABCP) of the application of the rule to affiliates of NRSROs operating in Australia. The added cost and operational burden in providing data and information relating to a local AUD ABCP program may inhibit the return of issuers to this market and impede its future growth, and therefore restrict the critical role performed by these issuers in providing funding to certain bank and non-bank providers of residential housing loans and other forms of credit to small business. We fully support the issues raised by the American Securitization Forum in its letter to you dated 3 May 2010 relating to disclosure by existing ABCP conduits.

Based on the foregoing, we are seeking an exemption from the Rule for credit ratings provided in respect of transactions which do not involve an offering into the U.S. (e.g. for transactions done under Regulation S). While the new requirements contemplated by the Rule are framed as rating agency requirements, the provisions referring to websites with arranger-provided information clearly have significant consequences for issuers, sponsors and underwriters in respect of rated deals in general and such consequences are arguably less appropriate in the context of offshore deals where the only U.S. connection arises as a result of the agency itself registering its non-U.S. ratings entities under the NRSRO rules. We consider that the scope for application of the Rule should be by reference to whether or not there is a U.S. offering of the relevant securities. We submit that this more defined scope would still satisfy the Commission's policy 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.

If the Commission declines to provide the requested exemption (notwithstanding the compelling reasons for doing so as set out herein), then we wish to request adjustment of the compliance date to provide further time for foreign arrangers to adequately prepare for the application of the new requirements. As noted above, many market participants outside of the U.S. became aware of

the purported global application of the Rule only recently and such participants have expressed significant concerns that they will be unable to meet the current tight timeframe. The AuSF is currently leading a number of significant disclosure, reporting and market practice related regulatory initiatives and the cumulative impact of such initiatives on Australian market participants' operational systems and resources should not be underestimated.

In closing, we note that application of the Rule in respect of credit ratings provided on deals involving Australian arrangers will give rise to significant operational issues and will delay transactions in what is already a fragile, but recovering, market. In considering our request, we ask the Commission to please bear in mind the potential significant impact of the Rule on the Australian securitisation market and other non-U.S securitisation markets and, in turn, on the amount of finance available to fund future economic growth.

We understand that the European Securitisation Forum has written to the Commission to express its views on the impact of the Rule on the securitisation market in the European Union and other non-U.S. markets. We concur with the views of the AFME/ESF letter of 5 May 2010 and join in its request to exempt non-U.S.structured finance products from the application of the Rule.

Thank you once again for the opportunity to comment on the Rule. Should you have any questions or desire additional information regarding any of the comments set out above, please do not hesitate to get in touch with me (Tel. +61 2 8243 3906) or Stuart Fuller, AuSF Chairman (Tel. +61 2 9296 2155).

Yours faithfully

A handwritten signature in black ink that reads "Chris Dalton". The signature is written in a cursive, flowing style.

Chris Dalton  
Chief Executive Officer  
Australian Securitisation Forum