Comments on File No. S7-18-08
Security Ratings

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In reviewing the Commission's proposal to amend rule and form requirements for filing of Forms S-3 and F-3 and, specifically the eligibility criteria for issuers, we are left with the sense that while the alternative "debt issued" criteria at first seems logical, we are not sure the concept is complete. Accordingly, we would offer the a few comments and suggestions.

<u>The basis for the "investment grade" criteria</u>

We have no doubt that the Commission has availed itself to all the available documentation and historical records which may be available to help it better understand why the "investment grade" criteria was originally included as part of the eligibility criteria associated with filing of the "Short Form".

Having said that, we believe that there maybe an alternative justification for having included the investment grade standard in the original criteria. In addition to the explanation provided by the Commission in this proposed rule, we would also suggest that the credit rating provided investors with assurance that the issuer had "recently" undergone a thorough review of their financial condition and the impact of the proposed financing on that issuer's well being and the securities themselves. We do understand why the recent conventional wisdom to move to a model with less reliance on credit ratings has resulted in legislation like Section 939A of Dodd-Frank.

However, we are not sure that substituting the credit rating with a standard based simply on a level of debt issued over the past three years is in the best interest of investors. As an example, over the years, many "Well Known Seasoned Issuers" have seen their fortunes and credit worthiness fluctuate widely, certainly within a given 24 or 36 month cycle. On that basis, we would question whether a "volume-alone" standard is an appropriate substitute.

Putting the rhetoric aside for a moment, we believe it would be hard to find a serious individual who would disagree with the notion that "under perfect conditions", an investor's ability to rely on a thorough and accurate credit analysis by an independent third party, such as an NRSRO, would be, perhaps, the best available tool for measuring relative risk and value in a new security. Unfortunately, over the last several years, the reality has gotten in the way of the theory, as the rating agencies all failed at one rate or another to live up to the "standard". Thus the movement to find an alternative set of criteria upon which investors might rely.

We would probably prefer and recommend taking a much longer term view towards improvements to the historical approach but we wouldn't think of picking that fight here. That horse has already left the barn. So, what might be a good alternative to the investment grade standard?

An alternative approach to a volume-only standard

We would agree with the basic premise that an issuer who has recently frequented the market should provide investors with a valuable "track record" off which they ought to be able "handicap" the issuer and it's new offering. However, we would add a couple additional qualifiers to the debt issued standard:

- Restrict the Types of Eligible Securities: We believe that utilizing a simple standard of $1Billion issued within the past three years is insufficient. Form S-3 has always been used by frequent issuers, many in the market every month or quarter. We believe it would be easy for some issuers, some that investors should be concerned about, to reach that level with relative ease. If some standards for restricting the types of securities which "count" towards the $1Billion threshold are not already under consideration, we would suggest that only securities with an original maturity date of 3 years or more may be counted towards the $1Billion threshold. This would exclude many medium term notes (a favorite of many large issuers) and other short term structures.

- Install a Default Rule: We would recommend that the Rule include a no-default test which would go back 5 years from the date of the proposed issuance. In other words, an issuer cannot have defaulted on the payment of any debt security within the past 5 years. We believe that such a rule, when taken together with the $1Billion threshold standard goes much further towards a legitimate replacement for the removal of the credit rating standard.

By installing this additional criteria to the Rule, we believe that the Commission will get much closer to the theoretical utopia that the original investment grade standard was meant to provide and will give investors something closer to the value that the credit rating was originally intended to have.

If an issuer cannot meet the above criteria, the Commission may wish to allow an issuer to file and issue under an S-3, if the issuer obtains an investment grade rating for the issue from an NRSRO. In that way, the Commission could be providing both an incentive to reduced reliance on credit ratings, while still providing other frequent issuers with the efficiencies that come with the Short Form program.

What is likely to be the result?
As we have indicated above, we are not certain that the removal of the NRSRO's from their prominent historic position in investment analysis is the best medicine for the long term health of the markets. Clearly, the rating agency model, in its purest form, represents the most efficient and thorough approach to creating market liquidity and transparency. The travails of the last several years have severely tainted the rating agencies' reputations for being diligent, thorough and un-biased. Some of these criticisms may be unwarranted but, as we have already stated, we will not attempt to fight that battle here. Too many mistakes were made and it is no wonder that their "consumers" are unhappy with their performance and are looking at alternatives.

We do understand that there are theoretical benefits associated with encouraging investors to look at alternative sources of information about the securities that they buy and sell. However, we are as convinced as ever that, over time, the efficiencies associated with the rating agency model will prevail and investors will once again rely on the NRSRO's for their analysis in their day-to-day activities, regardless of what legislation is passed or regulations are handed down.

On that basis, we would propose that the Commission leave the window open to what very well might become the reality in the markets over the next several years. In that regard, we would suggest that the final rule include a better balance between encouraging investors to be more self reliant, while retaining the option to utilize the rating agencies where appropriate and helpful to both issuers and investors.

We expect that more issuers than not will choose to have their securities rated by the NRSRO's, even though the option to do otherwise is available.

We appreciate the Commission's consideration of these comments and suggestions.

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