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August 8, 2011

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

Re: *Proposed Rules for Nationally Recognized Statistical Rating Organizations*
Securities Exchange Act of 1934 - Rel. No. 34-64514;
File No. S7-18-11 (May 18, 2011)

Dear Ms. Murphy:

Standard & Poor's Ratings Services ("Ratings Services"), a nationally recognized statistical rating organization ("NRSRO") registered under Section 15E of the Securities Exchange Act of 1934 (as amended, the "Exchange Act"), welcomes the opportunity to provide the Commission with its views on matters addressed in the release referenced above (the "Release"). In the Release, the Commission seeks comment on a number of proposals designed to fulfill statutory mandates in various provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). Following a summary of our views, we respond to questions raised by the Commission. For ease of reference, we have followed the subject matter order in Part II of the Release, using the same section designations, and adopted a numbering system for the questions within each section and subsection.

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I. Executive Summary

Ratings Services supports the goals of the Dodd-Frank Act, and of the Commission, to enhance investor understanding of credit ratings and the ratings process and to increase the overall transparency of that process. Over the past several years, the Commission has engaged in extensive rulemaking to further these goals. Ratings Services has also taken many steps to meet these goals, including enhancing our governance and control framework, updating criteria, instituting a more rigorous analyst training and testing education program, and expanding our efforts to explain the role of ratings to market participants. While many of the Commission's proposals in the Release will advance the legislative and regulatory goals, we do have concerns with a number of the Commission's proposals. These concerns fall into four major areas—analytical independence, usefulness to the public, effect on competition and international consistency.

A. Analytical Independence

A cornerstone of our and other NRSROs' business has always been the importance of analytical independence. This was recognized by Congress in drafting the Credit Rating Agency Reform Act of 2006 (the "Reform Act"). Section 15E(c)(2) of the Exchange Act (added pursuant to the Reform Act) prohibits the Commission from regulating the substance of credit ratings and the procedures and methodologies by which NRSROs determine credit ratings. Nothing in the Dodd-Frank Act changes this restriction. We are concerned that some of the proposed rules have the potential to regulate the substance of credit ratings and compromise analytical independence.

For example, if the Commission were to define the term "significant error," as it suggests in Section II.F, we believe it would effectively be substituting its judgment for that of the NRSRO, thereby regulating the substance of credit ratings. Because credit ratings reflect the subjective opinions of committees of rating analysts and incorporate both quantitative and qualitative factors, we believe it would be difficult, if not impossible, for the Commission to establish a principled definition of what might constitute a "significant error." In this case and many others throughout the Release, we express our concern with seeking to create objective standards where the nature of the business does not readily lend itself to such objectivity or a "one-size-fits-all" approach. Rather, as a general matter, we believe that giving NRSROs the freedom to determine the significance of issues on a case-by-case basis in light of the factors relating to each situation and applying each NRSRO's methodologies, is more appropriate and consistent with maintaining analytical independence than imposing external standards that will be inconsistent with the subjective and multifaceted nature of the analytical process.

Similarly, we understand that proposed Rule 17g-8(c)(1) would *require* an NRSRO to take a credit rating action - placing a credit rating on credit watch or review - immediately upon determining that a credit rating analyst who participated in rating an entity or its securities has taken a job with that entity. Because a credit watch designation is an analytical action, this requirement would encroach on NRSROs' analytical independence. Indeed, Ratings Services would be required to place a rating on credit watch even if our analysts determine that the potential conflict would not actually affect the rating in question. We urge the Commission to clarify how this proposed rule is intended to operate and avoid an outcome that would impair analytical independence.

In addition, elements of the proposed rules effectively seek to transform credit ratings from being a measure of relative ranking to one of absolute ranking, in contravention of Section 15E(c)(2). Our credit ratings do not connote a particular expectation of the probability of default or the amount of expected loss. However, proposed Rule 17g-7(a)(1)(ii)(L) would require that we provide this information on the credit rating information form for each rating. This would necessarily impinge on analytical independence by dictating the specific meaning of a rating and, moreover, one that is contrary to the current meaning of our ratings. Other information required by proposed subparagraphs (K) and (M) also appears to ascribe an ability to quantify sensitivities to change on an absolute basis, which we believe does not reflect the actual nature of credit ratings.

In Section II.G of the Release, the Commission asks whether it should require that the Rule 17g-7 disclosures on representations and warranties be provided no later than the time of the proposed Rule 424(h) preliminary prospectus, that is, five business days before the first sale of securities in the offering. NRSROs are not participants in the offering process. If this Rule is adopted, it may lead to the incorrect perception that NRSROs are part of that process, or lead to questions about their independence.

We also believe the Commission should not impose requirements on NRSROs that are more prescriptive than requirements for other types of entities it regulates. For example, NRSROs should not be *required* to submit changes in their methodologies to public comment in all instances, any more than broker-dealers or investment advisers are required to submit changes in their research or analytical methods for such comment. Directives to management of NRSROs regarding oversight of the internal control process, for example, need not, and should not, be more prescriptive than they are for broker-dealers or investment advisers.

B. Usefulness to the Public

Ratings Services is concerned that aspects of the proposed rules seek to impose requirements that we believe misconstrue the nature of credit ratings and, ultimately, are not in the best interest of investors and other market participants. We noted in our comment letter to the Commission on the "credit rating standardization study" (Rel. No. 34-63573 (December 17, 2010), File No. 4-622) that none of the three large global credit rating agencies define their rating systems in strict terms of target default and transition rates. Instead, each defines its rating system primarily as a system for relative rankings of creditworthiness. Accordingly, using default and transition rates as the primary basis for comparing the performance of NRSROs' rating systems places undue emphasis on absolute performance. Moreover, as noted in our earlier comment letter and as the Commission recognizes in its discussion in Section II.E of the Release, there is no single definition of "default." Seeking to create one may result in less diversity of opinion in the marketplace, depriving investors and others of the benefit of differing views and analysis.

The proposals relating to third-party due diligence for asset-backed securities also appear to misconstrue the role of NRSROs in a way that could make it appear they are participants in the securities offering process, when in fact they are not. NRSROs do not typically engage third-party due diligence providers. These organizations are typically engaged by the issuer, underwriter or other party associated with the transaction. Therefore, proposals to inject NRSROs into the offering process through their use as a disclosure outlet for third party due diligence, as contemplated by proposed Rule 15Ga-2(a), would be inappropriate. Releasing issuers or others from the obligation to furnish Form ABS-15G if the disclosure is instead provided by NRSROs could be construed as releasing issuers from accountability for the accuracy of the information included in the form, and could give investors a false impression that NRSROs vouch for the accuracy of such information.

The Commission should also be cognizant that, while improving investor understanding through appropriate disclosure is an important goal, care needs to be taken to avoid "disclosure overload", that is, requiring so much disclosure that truly meaningful information can become more difficult to see and investors can become confused or overwhelmed. We believe it is important, in seeking to meet the mandates of Section 15E(s) of the Exchange Act, that the Commission evaluate whether the level of detail being sought is consistent with the requirement in Section 15E(s)(2)(a) and proposed Rule 17g-7(a)(1)(i)(A) that the credit rating information form be easy to use and helpful to users of credit ratings. We question, for example, whether defining "credit rating action" to include affirmations, a position the Commission has not taken in other regulations where the term is defined, would contribute to the information form appearing so ubiquitously that, like many click-through agreements on internet websites, recipients pay little or no attention to the content.

C. Effect on Competition

In addition, the Commission should carefully consider the impact of its final rules on promoting greater competition in the credit rating industry. This is another important goal of the Reform Act and the Dodd-Frank Act. Although Ratings Services recognizes that the Commission must implement rules pursuant to requirements in the Dodd-Frank Act, we strongly encourage the Commission to keep in mind that the more detailed and prescriptive its regulations are, the more those regulations can dampen competition by imposing substantial costs and burdens and restricting opportunities for innovative approaches to rating analysis. Requirements that seek to standardize analysis, disclosure or other aspects of the credit rating process could lead to the production of less meaningful ratings. Paradoxically, with more homogenous credit ratings from various credit rating agencies, users might place undue reliance on them. This effect would be at odds with another key goal of the Dodd-Frank Act and recent Commission rulemaking – to reduce reliance on credit ratings.

D. International Consistency

Credit rating agencies, including NRSROs, today are subject to extensive regulation in many markets across the globe, including the European Union, Japan, Hong Kong and Australia. In addition, rating committees may, and often do, include analysts from different countries. Ratings Services urges the Commission to consider the impact of its final rules on the policies and procedures NRSROs apply globally in seeking to produce globally comparable benchmarks on creditworthiness. The timeliness and efficiency of rating committees, and the process overall, can also be negatively impacted by inconsistent rules by different government authorities. Lastly, inconsistent, sometimes contradictory, requirements can be challenging to administer and track.

We believe the Commission should exercise its leadership role in promoting international consistency in regulating credit rating agencies to ensure the smooth and efficient functioning of the global markets.

II. Responses to Requests for Comment

Section A—Internal Control Structures

A.1 *The Commission generally requests comment on all aspects of Section 15E(c)(3)(A) of the Exchange Act:*

A.1.1 *Should the Commission, as part of this rulemaking initiative, prescribe factors that an NRSRO would need to take into consideration when establishing, maintaining, enforcing, and documenting an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings?*

Response: No. The Commission, through its existing rules, has provided adequate guidance on the factors that address transparency, disclosure, management of conflicts of interest, record keeping, management of confidential information and prohibited acts. The Commission should require that internal control structures addressing compliance with these requirements be in place but leave to the discretion of the NRSRO how that implementation takes place.

A.1.2 *Alternatively, should the Commission defer rulemaking in order to review through examination and monitoring the effectiveness of the internal control structures each NRSRO establishes, maintains, enforces, and documents pursuant to Section 15E(c)(3)(A) of the Exchange Act?*

Response: Ratings Services believes this to be the most appropriate approach if the Commission deems that rulemaking is required. However, per our response to question A.1.1 above, we do not believe that mandating specific control-related standards by rule is either necessary or appropriate.

A.1.3 *If appropriate to prescribe factors now, should the factors address all elements of the self-executing requirement in Section 15E(c)(3)(A) of the Exchange Act (i.e., the establishment, maintenance, enforcement, and documentation of the internal control structure) or should the factors focus on the design (i.e., establishment) of the internal control structure or one of the other elements or a combination of some of the elements?*

Response: Please see our response to question A.1.1.

A.1.4 *If appropriate to prescribe factors now for the establishment of an internal control structure, what should those factors be? For example, should the Commission prescribe any of the factors identified in the sub-paragraphs below? In analyzing these potential factors, commenters should address the potential advantages, disadvantages, benefits, and costs that could result if the Commission prescribed any of the factors, as well as the potential effectiveness of the controls and any practical issues related to implementing them.*

Response: Please see our response to question A.1.1.

A.1.4a *Controls reasonably designed to ensure that a newly developed methodology or proposed update to an in-use methodology for determining credit ratings is subject to an appropriate review process (e.g., by persons who are independent from the persons that developed the methodology or methodology update) and to management approval prior to the new or updated methodology being employed by the NRSRO to determine credit ratings;*

Response: Please see our response to question A.1.1.

A.1.4b *Controls reasonably designed to ensure that a newly developed methodology or update to an in-use methodology for determining credit ratings is disclosed to the public for consultation prior to the new or updated methodology being employed by the NRSRO to determine credit ratings, that the NRSRO makes comments received as part of the consultation publicly available, and that the NRSRO considers the comments before implementing the methodology;*

Response: Please see our response to question A.1.1. In addition, we do not believe that the Commission should mandate that as a matter of course all new methodologies or changes to methodologies should be subject to public consultation before adoption. NRSROs need to balance the value of public comment against their ability to independently determine analytical disciplines. Further, although an NRSRO may seek public comment on proposed new or revised methodologies, there will likely be circumstances where the need to make prompt decisions or other considerations preclude such consultation. We also do not believe NRSROs should be required to make public those comments received in a consultation process. Commenters at their discretion can choose to make their own comments public, and NRSROs can choose to make comments public (unless the commenter has requested confidential treatment), but NRSROs should not be obligated to do so.

A.1.4c *Controls reasonably designed to ensure that in-use methodologies for determining credit ratings are periodically reviewed (e.g., by persons who are independent from the persons who developed and/or use the methodology) in order to analyze whether the methodology should be updated;*

Response: Please see our response to question A.1.1.

A.1.4d *Controls reasonably designed to ensure that market participants have an opportunity to provide comment on whether in-use methodologies for determining credit ratings should be updated, that the NRSRO makes any such comments received publicly available, and that the NRSRO considers the comments;*

Response: Please see our response to question A.1.1 as well as our response to A.1.4b.

A.1.4e *Controls reasonably designed to ensure that newly developed or updated quantitative models proposed to be incorporated into a credit rating methodology are evaluated and validated prior to being put into use;*

Response: Please see our response to question A.1.1.

A.1.4f *Controls reasonably designed to ensure that quantitative models incorporated into in-use credit rating methodologies are periodically reviewed and back-tested;*

Response: Please see our response to question A.1.1.

A.1.4g *Controls reasonably designed to ensure that an NRSRO engages in analysis before commencing the rating of a class of obligors, securities, or money market instruments the NRSRO has not previously rated to determine whether the NRSRO has sufficient competency, access to necessary information, and resources to rate the type of obligor, security, or money market instrument;*

Response: Please see our response to question A.1.1.

A.1.4h *Controls reasonably designed to ensure that an NRSRO engages in analysis before commencing the rating of an "exotic" or "bespoke" type of obligor, security, or money market instrument to review the feasibility of determining a credit rating;*

Response: Please see our response to A.1.1.

A.1.4i *Controls reasonably designed to ensure that measures (e.g., statistics) are used to evaluate the performance of credit ratings as part of the review of in-use methodologies for determining credit ratings to analyze whether the methodologies should be updated or the work of the analysts employing the methodologies should be reviewed;*

Response: Please see our response to question A.1.1.

A.1.4j *Controls reasonably designed to ensure that, with respect to determining credit ratings, the work and conclusions of the lead credit analyst developing an initial credit rating or conducting surveillance on an existing credit rating is reviewed by other analysts, supervisors, or senior managers before a rating action is formally taken (e.g., having the work reviewed through a rating committee process);*

Response: Please see our response to question A.1.1.

A.1.4k *Controls reasonably designed to ensure that a credit analyst documents the steps taken in developing an initial credit rating or conducting surveillance on an existing credit rating with sufficient detail to permit an after-the-fact review or internal audit of the rating file to analyze whether the analyst adhered to the NRSRO's procedures and methodologies for determining credit ratings;*

Response: Please see our response to question A.1.1.

A.1.4l *Controls reasonably designed to ensure that the NRSRO conducts periodic reviews or internal audits of rating files to analyze whether analysts adhere to the NRSRO's procedures and methodologies for determining credit ratings; or*

Response: Please see our response to question A.1.1.

A.1.4m *Any other factors that commenters identify and explain.*

Response: Please see our response to question A.1.1.

A.1.5 *If appropriate to prescribe factors now for the maintenance of an internal control structure, what should those factors be? In analyzing these potential factors, commenters should address the potential advantages, disadvantages, benefits, and costs that could result if the Commission prescribed any of the factors, as well as the potential effectiveness of the controls and any practical issues related to implementing them.*

Response: Please see our response to question A.1.1.

A.1.5a. *Controls reasonably designed to ensure that the NRSRO conducts periodic reviews of whether it has devoted sufficient resources to implement and operate the documented internal control structure as designed;*

Response: Please see our response to question A.1.1.

A.1.5b *Controls reasonably designed to ensure that the NRSRO conducts periodic reviews or ongoing monitoring to evaluate the effectiveness of the internal control structure and whether it should be updated;*

Response: Please see our response to question A.1.1.

A.1.5c *Controls designed to ensure that any identified deficiencies in the internal control structure are assessed and addressed on a timely basis;*

Response: Please see our response to question A.1.1.

A.1.5d *Any other factors that commenters identify and explain*

Response: Please see our response to question A.1.1.

A.1.6 *If appropriate to prescribe factors now for the enforcement of an internal control structure, what should those factors be? In analyzing these potential factors, commenters should address the potential advantages, disadvantages, benefits, and costs that could result if the Commission prescribed any of the factors, as well as the potential effectiveness of the controls and any practical issues related to implementing them.*

Response: Please see our response to question A.1.1.

A.1.6a *Controls designed to ensure that additional training is provided or discipline taken with respect to employees who fail to adhere to requirements imposed by the internal control structure;*

Response: Please see our response to question A.1.1.

A.1.6b *Controls designed to ensure that a process is in place for employees to report failures to adhere to the internal control structure; or*

Response: Please see our response to question A.1.1.

A.1.6c *Any other factors that commenters identify and explain*?

Response: Please see our response to question A.1.1.

A.1.7 *If appropriate to prescribe factors now for the documentation of an internal control structure, what should those factors be? For example, should there be a factor relating to the level of written* *detail about the internal control structure that should be documented? Are there other factors that should be considered? What potential advantages, disadvantages, benefits, and costs would result if the Commission prescribed any such factors?*

Response: Please see our response to question A.1.1.

A.1.8 *Identify any other factors that an NRSRO should consider when establishing, maintaining, enforcing, and documenting an internal control structure. Explain the utility of any factors identified as well as the potential advantages, disadvantages, benefits, and costs that could result if the Commission prescribed any such factors*

Response: Please see our response to question A.1.1.

A.2 *The Commission generally requests comment on all aspects of proposed new paragraph (b)(12) of Rule 17g-2.*

Response: Ratings Services agrees with the adoption of proposed new paragraph (b)(12) of Rule 17g-2. Ratings Services does not, however, believe the Commission should prescribe the process or means by which NRSROs establish, maintain, enforce, and document their internal control structures. Each NRSRO is in the best position to determine how to address these issues on its own. Through its NRSRO examination process, the Commission will have sufficient opportunity to assess the adequacy of each NRSRO's response.

A.3 *The Commission generally requests comment on all aspects of the proposed amendments to paragraphs (a) and (b) of Rule 17g-3. The Commission also seeks comment on the following:*

A.3.1 *Is the requirement to provide a description of the responsibility of management in establishing and maintaining an effective internal control structure sufficiently explicit? If not, how should the Commission modify proposed paragraph (a)(7) of Rule 17g-3 to make the requirement more understandable? For example, should the Commission provide guidance on how an NRSRO must describe the responsibility of management in establishing and maintaining an effective internal control structure? If so, what should that guidance be? For example, are there existing frameworks that such guidance could be modeled on?*

Response: The requirement is sufficiently explicit and additional guidance is not needed. Consistent with our views stated above on internal control structures within NRSROs, Ratings Services does not believe the Commission should be prescriptive. Like broker-dealers, investment advisers, and other types of regulated financial services firms, each NRSRO operates in its own unique way. The Commission runs the potential risk of establishing inflexible rules that might not be appropriate for every NRSRO in every situation.

A.3.2 *In terms of establishing an effective internal control structure, what level of NRSRO management should have primary responsibility for the design of the internal control structure and what level of management should supervise the design of the internal control structure? For example, should managers with direct responsibility for supervising the personnel who use the policies, procedures, and methodologies for determining credit ratings and the personnel who* *conduct compliance reviews for adherence to those policies, procedures, and methodologies design the internal control structure and a committee of the NRSRO's most senior managers supervise the design of the internal control structure? Should other management or non-management levels of the NRSRO have responsibility for either of these functions? In addition, Section 15E(t)(3)(C) of the Exchange Act provides that the board of directors of the NRSRO shall "oversee" the "effectiveness of the internal control system with respect to the policies and procedures for determining credit ratings." How should this statutorily mandated board responsibility be integrated with the responsibility of the NRSRO's management to establish an effective internal control structure?*

Response: The proposed wording requiring oversight from the Board of Directors and an annual attestation by the CEO is reasonable. The design and direct oversight of the internal control structure is best left to each NRSRO based upon its business needs and organization. Specific manager and supervisory definitions are not required.

A.3.3 *In terms of establishing an effective internal control structure, should the Commission define the term "internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings"? In terms of establishing an effective internal control structure, should the Commission further define the term "internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings"? If so, how should that term be further defined? Provide suggested rule text and supporting analysis.*

Response: The proposed wording is adequate and additional clarification is not required.

A.3.4 *In terms of establishing an effective internal control structure, should the Commission prescribe a standard in terms of the design? If so, what standard would be appropriate? For example, should the internal control structure be "reasonably designed" to achieve its objectives (a standard required by Sections 15E(g) and (h) of the Exchange Act with respect to policies and procedures of an NRSRO to address, respectively, the misuse of material nonpublic information and conflicts of interest)? Conversely, is the proposed requirement that the internal control structure be "effective" a sufficient standard?*

Response: As previously stated, we believe that each NRSRO should determine how to best implement controls taking into account its own circumstances. However, should the Commission decide to prescribe a standard, we believe that the "reasonably designed" standard would be appropriate and consistent with the approach the Commission has taken with respect to other regulated industries and NRSRO requirements.

A.3.5 *In terms of maintaining an effective internal control structure, what level of NRSRO management should have primary responsibility for monitoring the operation of the internal control structure and the NRSRO's adherence to the internal control structure? For example, should managers with direct responsibility for supervising the personnel who use the policies, procedures, and methodologies for determining credit ratings and the personnel who conduct compliance reviews for adherence to those policies, procedures, and methodologies have day-to-day responsibility for monitoring the operation of the internal control structure and the NRSRO's adherence to the internal control structure? Should other management or non-management levels of* *the NRSRO have responsibility for either of these functions? For example, should the personnel responsible for monitoring the operation of the internal control structure and the NRSRO's adherence to the internal control structure generate periodic (weekly, monthly, quarterly, and/or annual) reports that are provided to the NRSRO's most senior managers and the board about the internal control structure? If so, what information should be contained in those reports? In addition, Section 15E(t)(3)(C) of the Exchange Act provides that the board of directors of the NRSRO shall "oversee" the "effectiveness of the internal control system with respect to the policies and procedures for determining credit ratings." How should this statutorily mandated board responsibility be integrated with the responsibility of the NRSRO's management to maintain an effective internal control structure?*

Response: The design and direct oversight of the internal control structure is best left to each NRSRO based upon its business needs and organization. Specific manager and supervisory definitions are not required.

A.3.6 *Is the requirement to provide an assessment by management of the effectiveness of the internal control structure sufficiently explicit? If not, how should the Commission modify proposed paragraph (a)(7) of Rule 17g-3 to make the requirement more understandable? For example, given that the NRSRO needs to maintain the internal control structure (i.e., keep it in operation), should the Commission clarify that the assessment should address the effectiveness of the internal control structure during the entire fiscal year covered by the report?*

Response: The proposed wording is adequate and additional clarification is not required.

A.3.7 *In terms of reporting management's assessment of the effectiveness of the internal control structure, should the Commission provide guidance on how an NRSRO must assess the effectiveness of the internal control structure, such as evaluative criteria or standards? If so, what should those criteria or standards be? For example, should the Commission require that management's assessment of the effectiveness of the internal control structure be based on procedures sufficient to evaluate the design of the internal control structure and test its operating effectiveness?*

Response: The existing regulations and the proposed wording are adequate and additional guidance on how to assess the effectiveness of the internal control structure is not required.

A.3.8 *In terms of management's assessment of the effectiveness of the internal control structure, should the Commission define the conditions that preclude management from concluding that the internal control structure is effective? If so, how should an ineffective internal control structure be defined? For example, should management be precluded from concluding that the internal control structure is effective if there are one or more instances of "material weaknesses" in the internal control structure? If one or more instances of "material weaknesses" should preclude management from concluding that its internal control structure is effective, then should the Commission define "material weakness"? If so, how should the term "material weakness" be defined? If management cannot conclude that the internal control structure is effective, what corrective action or sanctions should be imposed on the NRSRO?*

Response: This definition is best left to each NRSRO based upon its business needs and organization. Through its NRSRO examination process, the Commission will have opportunities to assess the adequacy of each NRSRO's internal control structure and evaluation process.

A.3.9 *In terms of reporting management's assessment of the effectiveness of the internal control structure, should the Commission provide guidance regarding the topics to be addressed in the report? If so, what should that guidance be? For example, if the Commission prescribes factors that an NRSRO should take into consideration in establishing, maintaining, enforcing, and documenting its internal control structure, should the report specifically reference those factors? In addition, should the report identify or describe the framework management used to conduct the evaluation of the effectiveness of the internal control structure? Moreover, should the report identify deficiencies found during the assessment process? If so, should all deficiencies be identified or only those which preclude management from concluded [sic] that the internal control structure is effective? Furthermore, should the Commission require that the report disclose whether there were any significant changes in the internal control structure or other factors that could significantly affect the internal control structure subsequent to the date of the evaluation, including any corrective actions in response to any material weaknesses found during the evaluation?*

Response: The Commission should not set out such detailed requirements. While it may be helpful for the Commission to provide some general examples, it should be made clear that such examples are for guidance only and are not a prescriptive list.

A.3.10 *In terms of reporting management's assessment of the effectiveness of the internal control structure, should the report identify any fraud, significant errors, or previously undisclosed conflicts of interest identified during the assessment of the effectiveness of the internal control structure that could have a material effect on the integrity of the NRSRO's procedures and methodologies for determining credit ratings? What other disclosures should the report contain?*

Response: Reporting and disclosure should be made by the NRSRO as appropriate where instances of fraud, significant errors or undisclosed conflicts of interest are identified that may have a material effect on the integrity of the procedures and methodologies for determining credit ratings or the NRSRO's internal control structure.

A.3.11 *Should an NRSRO be required to maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the internal control structure that could be used by Commission examination staff to review the adequacy of the assessment? In this regard, should the Commission identify specific objectives of an internal control structure that the evidential matter would need to support? For example, should the evidential matter provide reasonable support for an assessment that the internal control structure is designed to effectively prevent or detect failures of the NRSRO to adhere to its policies, procedures, and methodologies for determining credit ratings? If such specific objectives should be identified, describe them and identify the evidential matter that could be retained to allow the Commission examination staff to review the adequacy of the NRSRO's assessment of the effectiveness of the internal control structure in achieving the objective.*

Response: The existing regulations provide adequate guidance on documentation requirements and additional clarification is not required. The determination of how to document its assessment of its internal controls should be left for each NRSRO to decide based upon its own business needs and organization. The Commission will have the opportunity to examine each NRSRO's efforts through its inspection program.

A.3.12 *With respect to proposed paragraph (b)(2) of Rule 17g-3, should the Commission provide more guidance on the type of management responsibilities that would qualify an individual as one who performs functions similar to a CEO? If so, what are those types of responsibilities?*

Response: This definition is best left to each NRSRO based upon its business needs and organization.

A.3.13 *Should the Commission require the internal control report to be filed separately from the Rule 17g-3 annual reports (which are kept confidential to the extent permitted by law) and, instead, require the internal control report to be disclosed to the public on, for example, the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system? What would be the benefits and costs of requiring the public disclosure of the report?*

Response: Although we are aware of no additional costs related to making disclosure of the report public, affording confidentiality to the report is appropriate since it may include proprietary or confidential information that pertains to the activities of the NRSRO, particularly on topics of potential sensitivity such as those involving competitively sensitive information. Therefore, the report should be afforded the same confidential treatment as the Rule 17g-3 annual reports.

A.3.14 *If it would be appropriate to make the report public, should the Commission prescribe a form for the report? If so, what information should the form require the NRSRO to provide in the disclosure? What would the form look like? Could any of the Commission's current forms serve as a model? If so, identify the forms and explain how they could be tailored to require an NRSRO to provide information about its internal control structure.*

Response: As stated above, it is our view that the report should not be made public. Each NRSRO should be free to draft its own report as it believes most appropriate to its individual circumstances. While the Commission may wish to provide some general examples of the type of information to be contained in the report, it should make clear that these are not a prescriptive list.

Section B—Conflicts of Interest Relating to Sales and Marketing

B.1 *The Commission generally requests comment on all aspects of proposed new paragraph (c)(8) of Rule 17g-5.*

Response: Ratings Services believes it is important for NRSROs to maintain and carefully manage a separation of commercial and analytical activities to protect the rating process from potential or perceived conflicts of interest. Controls should be designed by each NRSRO, based on its particular circumstances, to address the potential conflict of interest and protect against any commercial interests from potentially influencing ratings actions.

Ratings Services maintains a separation between the analytical and sales and marketing functions of its business through policies such as its Roles and Responsibilities Policy, which distinguishes between "commercial activities" (such as those related to setting or collecting fees) and "credit rating activities" (such as the development of criteria and the analysis of data and information to produce a credit rating). Pursuant to this Policy and internal operating guidelines, personnel engaged in analytical work are prohibited from engaging in commercial activities and personnel engaged in commercial activities are prohibited from engaging in credit rating activities.

The Commission also seeks comment on the following:

B.1.1 *Would the proposed amendment impact existing governance structures, reporting lines and internal organizations of NRSROs, particularly smaller NRSROs? If so, provide specific information about the nature and consequences of such impacts.*

Response: We believe that the same requirement for separation of commercial and analytical activities should apply to all NRSROs regardless of their size or any other differentiating factors. As the law requires this to be a prohibited conflict, we do not believe that size is a mitigating factor. The amendment, as proposed, would not impact Ratings Services' reporting lines or organizational structure as we are already operating under this construct.

B.1.2 *Are there sales and marketing activities persons that participate in determining credit ratings or developing or approving procedures or methodologies used for determining credit ratings, including qualitative or quantitative models, could participate in without undermining the goal of proposed paragraph (a)(8) of Rule 17g-5? If so, what types of activities? How could proposed new paragraph (a)(8) of Rule 17g-5 be modified to retain an absolute prohibition and at the same time not prohibit persons who participate in determining credit ratings or developing or approving procedures or methodologies used for determining credit ratings, including qualitative or quantitative models, to participate in sales and marketing activities that do not expose them to business concerns that could compromise their analytical integrity?*

Response: Rules should be crafted to permit certain activities that involve coordination and interaction by commercial and analytical personnel in appropriate circumstances. For example, credit rating analysts should, subject to appropriate controls, be permitted to participate, with employees on the commercial side of the business, in educational activities involving third parties. Such activities could include explaining criteria or providing the analyst's view on a particular market segment. These activities are based on publicly available information and are designed to promote transparency, not to influence a future rating action. We believe these types of interactions should be specifically permitted in the proposed new paragraph. Managed and controlled correctly (for example, by requiring that the analyst not participate in or be present during, any discussions of a commercial nature), they do not expose employees with analytical responsibilities to commercial matters that would compromise their analytical integrity. In this way, if an analyst attends a meeting involving third parties that includes educational as well as commercial activities, the analyst should be required to take no part in, and not be present for, the portion of the meeting that deals with commercial matters.

B.1.3 *Should the Commission provide guidance on what constitutes a sales and marketing activity? If so, how should the Commission define "sales and marketing activities"? In addition, should the Commission define what it means to "participate in sales and marketing activities"? Similarly, should the Commission define what it means to "participate in developing or approving procedures and methodologies used for determining credit ratings"? If so, how should the Commission define these terms?*

Response: We think it is appropriate for individual NRSROs to define these activities for themselves in a manner that is clear and straightforward to the market.

B.1.4 *Identify other requirements applicable to NRSROs that are designed to address this conflict of interest.*

Response: The rules adopted by the Commission should permit certain interactions between commercial and analytical employees regarding a current or prospective rated entity if the communications relate to gathering or providing background information in order to plan the ratings process, understand the anticipated timing requirements, and allow the commercial employees to estimate the cost for the engagement. These communications are necessary to allow analytical staff to analyze and "scope out" the work demands if the NRSRO is engaged to produce a rating, and for the commercial personnel to establish an appropriate fee.

B.2 *The Commission generally requests comment on all aspects of proposed new paragraph (f) of Rule 17g-5. The Commission also seeks comment on the following:*

B.2.1 *The Commission notes that Section 15E(h)(3)(A) of the Exchange Act provides that the Commission shall issue rules to prevent the sales and marketing considerations of an NRSRO from influencing the production of credit ratings by the NRSRO. Section 15E(h)(3)(B)(i) requires that the Commission's rules shall provide for exceptions for small NRSROs with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate (emphasis added). Why would the separation of the production of ratings from sales and marketing activities be appropriate for NRSROs that are not small but might not be appropriate for NRSROs that are small? For example, does the small size of an NRSRO make the conflict less likely to influence ratings? If so, why? Alternatively, could the small size of an NRSRO make the application of the absolute prohibition impractical, thus preventing a small credit rating agency from seeking registration or a small NRSRO from maintaining its registration? If so, would the adverse impact on competition outweigh the benefit of applying the absolute prohibition to a small NRSRO? If so, explain how.*

Response: We believe that the determination of a rating should not be influenced by sales or marketing activities. The public interest in maintaining separation between sales and marketing and rating activities does not change or diminish with the size of the NRSRO. Insofar as rules are intended to guard against conflicts, the level of compliance should not vary with the size of the NRSRO. We also note the relative absence of exemptions based on size for other regulated entities in other industries.

B.2.2 *Would the case-by-case approach proposed by the Commission appropriately implement Section 15E(h)(3)(B)(i) of the Exchange Act? If not, how should the proposal be modified? For example, should the Commission prescribe an objective self-executing exemption from the absolute prohibition in proposed paragraph (c)(8) of Rule 17g-5? For example, should the exemption be automatic for "small" NRSROs? If so, how should the Commission define a small NRSRO? For example, should the definition be based on the total assets of the NRSRO? In this regard, should the Commission adopt a rule that exempts any NRSRO that has total assets of $5 million or less from the absolute prohibition given that is how the Commission currently defines a small NRSRO for purposes of the Regulatory Flexibility Act? How would such an exemption work in practice? For example, would such a rule need to provide for a transition period for an NRSRO that crosses the total asset threshold to provide time to establish the separate sales and marketing function? How long should such a transition period be? For example, should it be 90, 120, 180 or some other number of days after the required filing date of the NRSRO's audited financial statements indicating the threshold was crossed are required to be filed with the Commission?*

Response: We do not believe that there is any rationale supporting differentiating the standards between large and small NRSROs. However, if the Commission were to exempt smaller NRSROs from the absolute prohibition in proposed paragraph (c)(8) of Rule 17g-5, we do not believe that revenues are an appropriate measure. Some NRSROs may issue many ratings at no fee or a low fee in order to gain market share. Conversely, some larger NRSROs may have lower revenue in certain practice areas. Nor do we believe that it would be appropriate for the Commission to consider exemptions on a case-by-case basis, as this would create considerable uncertainty as to the standard. NRSROs and the market seek clarity and predictability, which would not be afforded by a case-by-case approach. Other metrics, such as the number of personnel, or number of ratings issued in a practice area, may provide a more meaningful metric for the granting of any exemption.

To the extent that the Commission does decide to allow exemptions based on size, we believe that such exemptions should be very limited. Once an NRSRO that has received such an exemption crosses the threshold for full regulation, the transition time should be brief. The exempted NRSRO, when issuing ratings, should also be required to publicly disclose the rules from which they were exempt.

B.2.3 *What other factors should the Commission consider in analyzing whether the small size of an NRSRO makes it not appropriate to require the separation of the production of credit ratings from sales and marketing activities? Should the Commission consider the annual revenues of the NRSRO? Should the Commission consider the number of employees of the NRSRO? Would consideration of the number of employees create a disincentive to devote resources to adequately staff the NRSRO? Are there factors in addition to an NRSRO's size the Commission should consider in analyzing whether to grant an exemption under this proposal? If so, please describe any such factors*.

Response: Please see our response to question B.2.2.

B.2.4 *If the Commission granted relief to an NRSRO, should the Commission specify conditions for obtaining the relief? If so, what should those conditions be? For example, should the conditions limit the number of credit analysts that can participate in sales and marketing activities, limit the* *manner in which they can participate in such activities, require additional procedures to address the conflict, and require additional procedures to document how credit analysts participate in sales and marketing activities? If any of these conditions would be appropriate, describe how they could be implemented in practice.*

Response: If the Commission believes that the potential conflict at NRSROs cannot be mitigated other than through separation of analytical activities from sales and marketing activities, then we believe all NRSROs should adhere to the same rules. If the Commission nevertheless grants relief from the requirement to some NRSROs, the conditions for the exemption should specify the terms of the activities permitted and require that the NRSRO have policies to address the potential conflict, that the policies be transparent, and that compliance with the policies be well documented. Please also see our response to question B.2.2.

B.3 *The Commission generally requests comment on all aspects of proposed new paragraph (g) of Rule 17g-5. The Commission also seeks comment on the following:*

B.3.1 *Should the Commission propose, pursuant to Section 15E(h)(3)(B)(ii) of the Exchange Act, an independent and alternative process for suspending or revoking an NRSRO's registration for a violation of a rule issued under Section 15E(h) (i.e., a proceeding that is not pursuant to Sections 15E(d) and 21C of the Exchange Act)? If so, how should such a separate proceeding operate? For example, should it require the same findings proposed above or alternative or additional findings?*

Response: We believe that the provisions pursuant to Section 15E(d) and Section 21C of the Exchange Act are adequate and that no alternative process for a violation of Rule 15E(h) is required. In the event that a separate process is considered, we believe that the following findings should be prerequisites to a decision to suspend or revoke a registration:

- That the violation was contrary to an NRSRO's written policies and procedures aimed at preventing that specific type of violation;
- That the violation was committed at the organizational level, not the analyst level;
- That the violation was willful;
- That the violation was recurrent, not isolated;
- That the NRSRO was given an opportunity to remedy either the cause of the violation and/or the effect of the violation;
- That the violation cannot be addressed adequately by penalizing individual staff, rather than the entire organization;
- That the violation affected a rating (see response to question B.3.2 below); and
- That suspension or revocation of the NRSRO designation is in the public interest.

B.3.2 *In terms of the finding that "the violation affected a rating," what type of factual predicate should support such a finding? For example, would it be appropriate to make such a finding if the Commission determined that the violation caused the NRSRO to issue a credit rating that was not based solely on its documented procedures and methodologies for determining credit ratings (e.g., the Commission finds that undue influence impacted the credit rating assigned to the rated obligor, security, or money market instrument because strictly adhering to the procedures and* *methodologies would have resulted in the NRSRO issuing a credit rating at a lower or higher notch in the applicable rating scale)?*

Response: We suggest that a finding that a violation affected a rating should be based on the Commission's determination, based on evidence, that each of the following factors exist:

(i) there was an inappropriate attempt to influence the rating decision;
(ii) the NRSRO did not adhere in material respects to its applicable policies and procedures; and
(iii) the rating decision was not honestly held by the rating committee analysts who voted for it at the time it was issued.

B.3.3 *With respect to proposed new paragraph (g) of Rule 17g-5, should the proposed rule include additional or alternative findings that the Commission would need to make to revoke or suspend the registration of an NRSRO in a proceeding under Sections 15E(d) or 21C? If so, what should those findings be? For example, should the Commission need to find that the violation harmed investors or other users of credit ratings?*

Response: Ratings Services supports the view that there may be circumstances where suspension or revocation of an NRSRO's registration is appropriate under new paragraph (g) of Rule 17g-5. We do not believe, however, that in making that determination the Commission should consider whether such violation caused "harm" to investors. Such an evaluation would be extremely difficult, and in all likelihood impossible for the Commission to make, particularly since investor losses can result from any number of disparate factors, including, among other things, market movements; poor investment advice or decisions; or a misuse of credit rating opinions which, as noted, are not investment advice, or buy, hold, or sell recommendations, and are not indications of market liquidity and price or guarantees of credit quality or of future credit risk.

Findings the Commission might appropriately make as a prerequisite to suspension or revocation include those noted in our response to question B.3.1 above. The Commission might also wish to consider whether there should be a transition period before suspension or revocation is effective due to the impact on market participants who hold securities that will no longer be rated by a registered NRSRO.

B.3.4 *Should the Commission, as proposed, require a public interest finding in order to suspend or revoke an NRSRO's registration in a proceeding under paragraph (g) of Rule 17g-5 pursuant to Section 21C, or should the rule provide for the suspension or revocation of an NRSRO's registration solely based on a finding that a violation of a rule affected a rating?*

Response: Ratings Services believes that the Commission should require a public interest finding in order to support the significant sanction of suspension or revocation of an NRSRO's registration. Such a requirement is appropriate given the important roles that NRSROs play in the domestic and global capital markets, and would be consistent with the language and intent of the Dodd-Frank Act.

B.3.5 *With respect to proposed new paragraph (g) of Rule 17g-5, should the rule incorporate only Section 15E(d) of the Exchange Act? If so, why? Alternatively, should it incorporate only Section 21C of the Exchange Act? If so, why?*

Response: Although the Commission would have the ability to seek cease-and-desist orders against NRSROs under Section 21C of the Exchange Act, we do not believe it is necessary to specifically incorporate that Section into the new proposed rule given the existence of Section 15E(d), which was specifically drafted by Congress to address potential violations committed by NRSROs. We believe that Section 15E(d) provides the Commission with adequate ability to address potential breaches in an appropriate manner. We further note that one portion of Section 21C (regarding temporary orders) is not applicable to NRSROs, but instead is expressly limited to violations by brokers, dealers, investment advisers, investment companies, municipal securities dealers, government securities brokers, government securities dealers, registered public accounting firms and transfer agents, and would thus not be appropriate as part of new paragraph (g) of Rule 17g-5.

B.3.6 *As noted above, there would be no limit on the amount of time for which the Commission could suspend the registration of an NRSRO in a proceeding under Section 21C of the Exchange Act and proposed paragraph (g) of Rule 17g-5. Should the Commission add such a time limit to be consistent with Section 15E(d) of the Exchange Act? Alternatively, does the different standard provide the Commission with appropriate flexibility to seek longer suspensions?*

Response: We believe that the 12 month time limit in Section 15E(d) of the Exchange Act provides the Commission with adequate scope to deal with any violation and no further flexibility is required.

Section C--Look Back Review — Rule 17g-8(c)

C.1.1. *Would the requirements to have procedures reasonably designed to ensure the NRSRO takes the steps set forth in proposed paragraphs (c)(1), (2), and (3) of new Rule 17g-8 alter the procedures and methodologies an NRSRO uses to determine credit ratings? For example, would an NRSRO take materially different steps if a look-back review conducted pursuant to Section 15E(h)(4)(A) of the Exchange Act determined that a credit rating was influenced by a conflict of interest? If so, describe in detail how those steps would differ.*

Response: We support the implementation of look-back policies. Ratings Services has had its own look-back review policy in place since 2008. We recognized at that time, and continue to believe, that the movement of analysts between the ratings industry and the financial services and other business sectors presented a potential conflict that warranted consideration.

Pursuant to our look-back policy, whenever we know that a Ratings Services' analyst has accepted employment with a rated entity or a related third party (i.e., a party that interacts with Ratings Services on behalf of a rated entity, such as an underwriter or an arranger), we conduct a review to determine whether the analyst participated in any capacity in determining a credit rating for the rated entity or the related third party. If the analyst did participate in such ratings, we undertake a review to identify the most recent credit rating in which the departing analyst participated that involved the rated entity or the related third party, as well as all other credit ratings in which the analyst participated that involved the rated entity or the related third party, as applicable, for a set period, specified by the jurisdiction in which the analyst operated, prior to the analyst's departure.

Although Ratings Services supports the implementation of look back policies by all NRSROs, we are concerned about the clause in new proposed rule 17g-8(c)(1) that would require NRSROs to “[i]mmediately publish a rating action placing the applicable credit ratings . . . on credit watch review based on the discovery of [a] conflict.” Ratings Services has long communicated to the marketplace that the placement of a credit rating on CreditWatch signals our opinion regarding the potential direction of the rating, focusing on identifiable events and short-term trends that could cause that rating to be placed under special surveillance. Specifically, a CreditWatch designation is an *analytical action*, communicating that: (i) a deviation from an expected trend has occurred or is expected and additional information is necessary to evaluate the current rating; (ii) there has been a material change in performance of an issue or issuer, but the magnitude of the rating impact has not been fully determined, and we believe that a rating change is likely in the short-term; or (iii) a change in criteria has been adopted that necessitates a review of an entire sector or multiple transactions and we believe that a rating change is likely in the short-term.

Because a CreditWatch designation is an analytical action, this proposed rule, as written, would necessarily encroach on NRSROs’ analytical independence. Indeed, under this proposed rule, Ratings Services would be required to make a CreditWatch designation regardless of whether, in its own independent analytical judgment, it determined that the potential conflict would not actually affect the relevant rating. Put differently, the Commission would be imposing on NRSROs its own meaning of a CreditWatch designation. Accordingly, this proposed rule is inconsistent with Section 15E(c)(2) of the Exchange Act, which provides that the Commission’s rules and regulations “shall be narrowly tailored to meet the requirements of this title” and that the Commission may not “regulate the substance of credit ratings or the procedures and methodologies by which any [NRSRO] determines credit ratings.”

To be clear, in the event that Ratings Services discovered a potential conflict of interest in the course of a look-back review, and determined that the conflict may likely have influenced a rating decision, we would place the affected ratings on CreditWatch if analytically appropriate. However, it is also possible that Ratings Services might determine, again in the independent exercise of its own analytical judgment, that the potential conflict did not likely have any effect on the rating, in which case it may not take any rating action. The point is that Ratings Services should remain free to determine, based on its own analytical judgment, whether and when to place rated issuers and securities on CreditWatch. It should not be mandatory.

Mandating CreditWatch actions could potentially distort the market’s understanding of the CreditWatch designation, as it has come to be known, and result in inappropriate and/or exaggerated signals to the market. In our experience to date, our look-back reviews have not led to ratings changes, an outcome that makes sense considering that our ratings are arrived at through a committee process that is subject to numerous controls and where no one analyst is in a position to dictate a particular view. Yet, as proposed, this rule would require NRSROs to signal a potential ratings change to the market, comparable to situations where there are major market moving events and circumstances—*e.g.*, mergers, recapitalizations, voter referendums, regulatory actions, performance deterioration of securitized assets, or anticipated operating developments — potentially causing significant market confusion and disruption.

By way of example, consider a scenario where Ratings Services has identified an analyst who was a member of the rating committee that rated the creditworthiness of a State and subsequently was hired by an agency of that State. An NRSRO should not be forced to place that State’s rating on CreditWatch, even before it could assess the significance of the potential conflict. This could result in significant, unnecessary disruption and confusion in the market. Further, forced CreditWatch actions that are not based on the NRSRO's analytical judgment could also be particularly problematic, for example, to investors who may be required to divest securities placed on CreditWatch as part of their investment guidelines.

For these reasons, Ratings Services supports the elimination of new proposed Rule 17g-8(c)(1). For the same reasons, we also support elimination of proposed Rule 17g-8(c)(3), to the extent that it would require NRSROs to publish ratings affirmations or other actions following a CreditWatch action required by proposed Rule 17g-8(c)(1). If the Commission nevertheless decides to go forward with this proposed rule, we believe the text should be amended to make clear that a CreditWatch designation is required in connection with a look-back review *only* when it is determined that a potential conflict actually influenced a rating (i.e., resulted in a rating different than would otherwise have been determined), not every time a look back review is initiated. We also suggest that as a general matter the Commission consider the contents of the credit rating information form in light of the disclosure requirements for presentations of credit ratings under European Union and Hong Kong law, with a view towards internationally consistent regulation.

C.1.2. *Under Section 15E(h)(4)(A)(i) of the Exchange Act, an NRSRO must, in certain circumstances conduct a review to determine whether any conflicts of interest of an employee influenced the credit rating. Should the Commission define what it means to have a conflict of interest "influence" a credit rating? If so, how should this term be defined? For example, should a credit rating be deemed "influenced" if the NRSRO would have taken a different rating action with respect to the credit rating in the absence of the conflict?*

Response: As noted, Ratings Services already has in place a comprehensive look-back policy that requires a review of credit ratings in situations where a conflict may have been present. The determination of whether it is necessary to convene a new rating committee following a look-back review — *i.e.*, whether the potential conflict may have "influenced" the rating — is a decision that we believe should be left to an NRSRO's independent judgment, rather than dictated by Commission rules. In our view, the Commission's role, consistent with Section 15E(c)(2) of the Exchange Act (prohibiting regulation of the substance of credit ratings), should be to ensure that NRSROs are adhering to their own publicly available look-back policies.

If, however, the Commission nevertheless seeks to define what it means for a potential conflict to "influence" a rating, we believe the term should be defined to include situations where a primary analyst or voting member of a credit rating committee succeeded in persuading other committee members to agree to a ratings determination that was inconsistent with the NRSRO's ratings criteria, procedures and methodologies.

C.1.3. *How would an NRSRO determine whether this conflict influenced a credit rating? Describe the types of evidence that would support such a determination. What steps could an NRSRO take to analyze whether this conflict influenced a credit rating? Are there any practical issues with respect to making such a determination? If so, describe them.*

Response: An NRSRO should review the ratings upon a discovery that they may have been influenced by a conflict. For example, pursuant to our look-back policy, whenever we know that a Ratings Services analyst has accepted employment with a rated entity or a related third party, we conduct a review to determine whether the analyst participated in any capacity in determining a credit rating for the rated entity or the related third party. If the analyst did participate in such ratings, we undertake a review to identify the most recent credit rating in which the departing analyst participated that involved the rated entity or the related third party, as well as all other credit ratings in which the analyst participated that involved the rated entity or the related third party, as applicable, for a set period, specified by the jurisdiction in which the analyst operated, prior to the analyst's departure.

C.1.4. *Is there any reason an NRSRO should not have procedures reasonably designed to ensure it immediately publishes a rating action placing the obligor, security, or money market instrument on credit watch based on the discovery of the conflict and include with the publication of the rating action the information required by proposed new paragraph (a)(1)(ii)(J)(3)(i) of Rule 17g-7 as would be required by proposed paragraph (c)(1) of Rule 17g-8? If so, please explain in detail the rationale for not disclosing this information immediately in this manner. In addition, if a commenter agrees with the objective of the requirement but not the manner of disclosure, describe any alternative means of disclosure that would achieve the objective.*

Response: For the reasons stated in our response to question C.1.1 above, we do not believe the Commission should require NRSROs to "[i]mmediately publish a rating action placing the applicable credit ratings . . . on credit watch review based on the discovery of [a] conflict" during a look-back review. Instead, an NRSRO should determine, based on its analytical criteria and in its independent analytical judgment, whether a potential conflict warrants a CreditWatch action and/or an adjustment to the existing rating. For example, a CreditWatch would be appropriate according to our policies when the conflict would likely have impacted the rating. If the NRSRO's rating review results in a revised rating, the NRSRO could be required to publish that revised rating, along with a disclosure of the existence of conflict. This is the type of approach used by Ratings Services in connection with other potential violations of regulation or ratings policy. In our view, treating look-back reviews differently by requiring mandatory CreditWatch actions is inappropriate, inconsistent with the treatment of other potential conflicts, and disproportionate to the concern the Commission is seeking to address.

C.1.5. *What practical issues should the Commission consider in implementing proposed paragraph (c)(1) of new Rule 17g-8? How could the proposal be modified to address any practical issues identified without undermining the objectives of the proposal?*

Response: We believe that NRSROs should be permitted to exercise discretion under their own look-back policies to determine whether a review is necessary. As noted, under our policy, if a departing analyst participated in ratings of the analyst's new employer or a related third party (i.e., parties that interact with Ratings Services on behalf of a rated entity, such as an underwriter or an arranger), we evaluate whether there is a need to convene a new credit rating committee to reconsider the potentially affected rating. If this new committee were mandated regardless of whether an NRSRO believed it was necessary, it would constitute a violation of Section 15E(c)(2) of the Exchange Act (prohibiting regulation of the substance of credit ratings). Moreover, a rule mandating the convening of new ratings committees, regardless of whether the NRSRO has determined that such committees are necessary, would impose significant new burdens on NRSROs that could affect the timeliness of ratings determinations. In addition, to the extent that investment guidelines require the divestiture of instruments placed on CreditWatch, paragraph (c)(1) may increase market volatility by compelling the managers of the affected portfolios to sell securities they would otherwise have retained.

C.1.6. *Would the information required by proposed new paragraph (a)(1)(ii)(J)(3)(i) of Rule 17g-7 to be included in the form published with a rating action placing the obligor, security, or money market instrument on credit watch be useful to the users of the NRSRO's credit ratings? Is there additional or alternative information that should be provided? If so, please describe such additional or alternative information.*

Response: For the reasons stated in our response to question C.1.1 above, Ratings Services does not believe the Commission should require NRSROs to "[i]mmediately publish a rating action placing the applicable credit ratings . . . on credit watch review based on the discovery of [a] conflict" during a look-back review. We do believe, however, that NRSROs should disclose the bases of CreditWatch actions regardless of whether such actions are based on their own analytical judgments or are mandated pursuant to these proposed rules.

C.1.7. *Is there any reason an NRSRO would not have procedures reasonably designed to ensure it promptly determines whether the current credit rating assigned to the obligor, security, or money market instrument must be revised so it no longer is influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings as would be required pursuant to proposed paragraph (c)(2) of new Rule 17g-8? If so, please explain in detail the rationale for not promptly making such a determination. In addition, are there alternative approaches to addressing conflicts of interest influencing credit ratings that the Commission should consider? If so, please identify and describe them.*

Response: We agree that an NRSRO should have procedures reasonably designed to require that it promptly determines whether a credit rating should be revised to comport with its criteria and procedures when it was influenced by a conflict of interest. We support the adoption of such policies across the credit rating industry. For the reasons stated above, Ratings Services does not, however, support a mandate that would require NRSROs to convene new rating committees every time a potential conflict is discovered, regardless of whether the NRSRO determines in its own analytical judgment that a new committee is necessary.

C.1.8. *What practical issues should the Commission consider in implementing proposed paragraph (c)(2) of new Rule 17g-8? How could the proposal be modified to address any practical issues identified without undermining the objectives of the proposal?*

Response: Ratings Services' look-back policy is fully consistent with proposed paragraph (c)(2) of new Rule 17g-8 and we have not encountered significant "practical issues" in connection with its implementation. Nevertheless, since a potential conflict could affect one or a large number of ratings, the Commission's rule should expressly include a reasonableness standard associated with the term "promptly" to account for the potential that review timing will differ from situation to situation.

C.1.9. *Should the Commission be more prescriptive in terms of how an NRSRO would be required to determine whether the current credit rating assigned to the obligor, security, or money market instrument must be revised so it no longer is influenced by a conflict of interest and is solely a* *product of the documented procedures and methodologies the NRSRO uses to determine credit ratings? If so, what actions should the Commission require be included in the NRSRO's policies and procedures? For example, should the Commission specifically require the NRSRO to apply de novo its policies and procedures for determining credit ratings in the ways described above?*

Response: As noted, we believe that NRSROs should determine, in the exercise of their own independent analytical criteria and judgments, whether a credit rating requires revision on the basis that it may have been influenced by a conflict of interest. This decision should be made in accordance with the NRSRO's established, publicly available policies. As with other requirements under the Commission's rules, the Commission may review the NRSRO's adherence to such policies as part of its regulatory oversight. We do not believe it would be appropriate, or consistent with Section 15E(c)(2) of the Exchange Act (prohibiting regulation of the substance of credit ratings), for the Commission to have a role in determining when such reviews are required or whether existing ratings should be revised as a result.

C.1.10. *Would a de novo application of the NRSRO's policies and procedures for determining credit ratings be sufficient to address the conflict of interest? Are there alternative or additional approaches to determining whether a credit rating influenced by a conflict of interest should be revised?*

Response: Ratings Services does not support a mandated de novo review for the reasons set forth in our responses to questions C.1.1 and C.1.9 above. If the Commission nevertheless imposes such a requirement, we believe further information and guidance would be warranted. For example, would this de novo review require the credit rating to be reevaluated using the same criteria and models that were in place at the time of the original rating, without the benefit of subsequent historical knowledge? In our view, such a requirement would serve little purpose to the market as it would ignore more recent developments, and would very likely cause substantial confusion among market participants.

C.1.11. *Is there any reason an NRSRO should not have procedures reasonably designed to ensure that it promptly publishes, as applicable, a revised credit rating or an affirmation of the current credit rating based on the determination of whether the current credit rating assigned to the obligor, security, or money market instrument must be revised and include with the rating action the information required by proposed new paragraphs (a)(1)(ii)(J)(3)(ii) or (iii) of Rule 17g-7, as applicable, as would be required pursuant to paragraph (c)(3) of new Rule 17g-8? If so, please explain in detail the rationale for not promptly revising or affirming the current credit rating.*

Response: As noted, Ratings Services has a look-back policy in place and pursuant to that policy may convene a new rating committee where it is determined, in the exercise of our independent analytical judgment, that a rating may have been affected by any potential conflict of interest. Pursuant to this and other Ratings Services' policies, if this rating committee should determine that a change to a public rating is necessary, we would publish such a ratings change, along with our ratings rationale.

Regarding the question about adherence to the requirements of Rule 17g-7, please refer to our answer to question C.1.6 above.

C.1.12. *What practical issues should the Commission consider in implementing proposed paragraph (c)(3) of new Rule 17g-8 that would require an NRSRO to have procedures reasonably designed to ensure that it promptly publishes, as appropriate, a revised credit rating or an affirmation of the current credit rating and includes with the rating action the information required by proposed new paragraphs (a)(1)(ii)(J)(3)(ii) and (iii) of Rule 17g7? For example, would the requirement to estimate the impact the conflict had on the prior rating actions substantially prolong the time between placing the credit rating on credit watch and either publishing a revised credit rating or affirming the current credit rating? How could the proposal be modified to address any practical issues identified without undermining the objective of promptly addressing a credit rating influenced by a conflict of interest and at the same time providing investors and other users of credit ratings with the information about the conflict?*

Response: Whether paragraph (c)(3) of new proposed Rule 17g-8 would prolong the time needed to resolve a CreditWatch designation will necessarily be fact-specific and may vary from rating to rating. However, it is likely that in many cases this proposed rule would create inefficiencies, potentially delaying the rating release, by forcing ratings committees to engage in estimations of the impact of a potential conflict on a credit rating. Please also refer to our answer to question C.1.1 above.

C.1.13. *In terms of estimating the impact of a conflict on a past rating action, would a feasible approach be to apply de novo the procedures and methodologies for determining credit ratings to the relevant obligor, security, or money market instrument using information and inputs as of the time period in which the conflicted credit rating was determined? Would this approach result in a meaningful estimate? Are there alternative or additional steps that could be taken to estimate the impact?*

Response: Please see our response to question C.1.10.

C.1.14. *Would the information required by proposed new paragraphs (a)(1)(ii)(J)(3)(ii) and (iii) of Rule 17g-7 to be included in the form published with a revised or affirmed credit rating, respectively, be useful to the users of the NRSRO's credit ratings? Is there additional or alternative information that should be provided? If so, please describe such additional or alternative information.*

Response: Please see our response to question C.1.6.

C.1.15. *How would the proposals impact obligors and issuers subject to a credit rating determined through the "look-back" review to be influenced by the conflict of interest?*

Response: Ratings Services has no comment.

C.1.16. *In the case of an NRSRO that only makes its rating actions available to subscribers, former subscribers likely would not receive the proposed notices. Does this raise a significant issue that the Commission should address? If so, describe alternatives that could be used to address this issue.*

Response: Ratings Services has no comment.

D. <u>Fines and Other Penalties; Suspension and Revocation of Registration</u>

D.1. *Are the fines, penalties and other sanctions applicable to NRSROs in Sections 15E, 21, 21A, 21B, 21C, and 32 of the Exchange Act sufficient? If not, what additional fines and penalties should the Commission establish by rule?*

Response: As the Commission observes in the Release, Section 15E(d)(1) of the Exchange Act already provides authority to censure an NRSRO; limit the activities, functions or operations of an NRSRO; and suspend an NRSRO for a period not exceeding 12 months or revoke its registration for violations of the Exchange Act, among other actions. Section 932(a)(3) of the Dodd-Frank Act separately provides the Commission with explicit authority to seek sanctions against persons associated, or seeking to become associated, with an NRSRO, and to impose censure, suspensions or bars on such individuals' association with an NRSRO.

The Exchange Act further empowers the Commission to assess civil penalties against an NRSRO (or other registered entity) for violating the securities laws, failing to supervise employees to prevent violations of the securities laws, or making false statements to the Commission. *See* 15 U.S.C. 78u(d)(3).

Ratings Services supports legislative efforts to improve NRSRO accountability through the use of regulatory fines for non-compliance with the Exchange Act, including the portions directly applicable to NRSROs. We agree with the Commission's conclusion that current law, including the Dodd-Frank Act amendments, provides a sufficiently broad range of fines, penalties and sanctions which the Commission may use in regard to NRSROs, and we further agree that there is no specific need to establish new fines or penalties at this time.

<u>Section E – Public Disclosure of Information about the Performance of Credit Ratings</u>

E.1.a *The Commission generally requests comment on all aspects of the proposed new instructions for Exhibit 1 to Form NRSRO.*

Response: As we stated in our comment letter on the "credit rating standardization study" (Release No. 34-63573, File No. 4-622), "[e]ach of [the] three large global credit rating agencies defines its rating system primarily as a system for ***relative rankings*** of creditworthiness. This reflects the practical balancing of what is most useful to investors and what credit rating agencies can reasonably deliver." (Letter from Deven Sharma to Elizabeth Murphy at 6 (Feb. 7, 2011), http://www.sec.gov/comments/4-622/4622-14.pdf (emphasis in original). That is, none of the three major credit rating agencies defines its rating system in strict terms of target default and transition rates. Accordingly, using default rates and transition rates as the primary basis for comparing the performance of NRSRO rating systems overlooks what the systems are designed to do.

The use of default rates and transition rates is not the best way to measure the performance of rating systems that do not define their ratings in terms of target default and transition rates. Instead, Ratings Services recommends emphasizing a measure of rank-ordering power, such as the Gini coefficient. Using a measure of rank-ordering power would more effectively implement the mandate of Section 15E(q)(2)(A) of the Exchange Act.

Measuring Ratings Performance. Although Ratings Services routinely publishes default rates and transition rates, the most important performance measures of Ratings Services' rating system relate to the rank-ordering power of the system. As we have emphasized in our publications:

"… the key objective of Standard & Poor's ratings is rank ordering the relative creditworthiness of issuers and obligations. Accordingly, a key measure that we use for assessing the performance of our ratings is how well they have rank-ordered observed default frequencies during a given test period (usually one year). That is, when our ratings perform as intended, securities with higher ratings should display lower observed default frequencies than securities with lower ratings during a given test period.

Our performance studies have shown mostly strong rank ordering of default frequencies within each major segment of the fixed-income market (e.g., corporate bonds, structured finance, public finance, etc.). However, as noted above, economic cycles do not produce the same degree of stress in all geographic regions and in all market segments at any point in time. Accordingly, although we strive for comparability in our ratings, we expect to observe less consistency in rank ordering of observed default frequencies among regions and market segments. Only over very long periods – covering multiple economic cycles – would we expect to be able to observe whether similarly rated credits from different market segments actually experience similar long-term default frequencies.

Small sample sizes also sometimes affect measurements of actual default frequencies. Comparisons of default rates between sub-sectors that contain small numbers of credits can be distorted by small sample sizes and by idiosyncratic factors.

Beyond the primary measure of rank ordering, we secondarily consider whether ratings have effectively incorporated other aspects of creditworthiness. In that vein, we examine whether the observed default rate for each rating category during a given test period is higher or lower than has been historically observed during past periods of similar economic and financial conditions. We examine rating transitions and sudden defaults to consider the degree to which ratings have captured credit stability. Likewise, we examine recoveries following default to assess whether their impact has been captured. However, the secondary measurements do not figure into the ultimate measurement of ratings performance, which remains focused on an assessment of rank ordering." (Adelson, M., R. Ravimohan, C. Griep, D. Jacob, P. Coughlin, N. Bukspan, and D. Wyss, *Understanding Standard & Poor's Rating Definitions*, Standard & Poor's article (June 3, 2009).

Our published studies emphasize a performance measure called the Gini coefficient, which is a measure of rank-ordering power. See e.g., Vazza, D. and N. Kraemer, *2010 Annual Global Corporate Default Study And Rating Transitions*, Standard & Poor's Global Fixed Income Research (30 Mar 2011); Erturk, E., *Global Structured Finance Default Study–1978-2010: Credit Trends Started To Improve In 2010, But U.S. RMBS Faces Challenges*, Standard & Poor's Structured Finance Research (Mar. 28, 2011). The published studies provide readers with the technical details of how the measure works and how it is calculated. Significantly, the studies highlight the rank-ordering power of the system over different time horizons.

Beyond Gini coefficients, default rates, and transition rates, published studies by Ratings Services include various other measures of the performance of the rating system. For example, the most recently published global corporate default study assesses: (i) the average and median paths to default; (ii) the ratings distribution of defaulters immediately prior to default; (iii) the average notch movements in rating actions; (iv) defaults by geographic region and industry sector; and (v) times to default for credits in each rating category and from initial ratings. Those measures reveal important aspects of how ratings serve to illuminate credit risks for users and demonstrate that the performance of a rating system cannot be fully judged by a single measure.

Definition of "Default." Ratings Services also believes that the standard definition of default proposed in paragraph (4)(B)(iii) of the instructions to Exhibit 1 of Form NRSRO will produce unintended consequences. The first part of the proposed definition (the "standard definition") would fail to classify as defaults non-payment events on all instruments that legally constitute equity, including all securitization instruments that use "pass-through" trusts. The problem in the proposed rule is the reference to "according to the terms of an obligation." The legal terms of a pass-through instrument do not entitle the holder to receive anything more than is collected on the underlying trust assets. For purposes of rating a pass-through security, an NRSRO may impute the existence of a payment promise that does not actually exist under the terms of the instrument.

For the reasons described above, under the first part of the proposed definition, there could be no default on preferred stock. Ratings Services currently does not treat non-payment of dividends on preferred stock as a default. Conversely, the first part of the definition would include as defaults payment deferrals on certain CLO notes that legally default but which are not generally treated by the industry as having defaulted because the default is part of their intended design. For example, in a given CLO transaction, an "acceleration event" would make the entire outstanding amount of the senior CLO notes immediately due and payable and would trigger the allocation of all cash flows from the underlying portfolio to the senior notes. However, cash flows from the underlying portfolio would not be sufficient to immediately retire the senior notes. Therefore, the senior notes may be viewed as suffering a legal payment default. Nonetheless, CLO market participants generally seem to ignore the "immediately due and payable" provisions and treat the allocation of all cash flows to the senior notes (over time) as part of the normal course of affairs within the structure.

Ratings Services believes that the classifications of default under the second part of the proposed definition would be quite common. This is contrary to the Commission's preliminary belief, as stated in the proposing release, that "classification of default under the second definition would be rare" (Rel. No. 34-64514, May 18, 2011, at p.82). This is primarily because of the issue described above relating to instruments that legally constitute equity (*e.g.*, pass-through securities and preferred stock). In addition, the second part of the definition would capture distressed exchanges, which Ratings Services currently treats as a type of default.

E.1.a1 *With respect to prescribing a standard method of calculating transition and default rates, would a single cohort approach (rather than an average cohort approach or some other approach) be the most appropriate way to make the transition and default rates clear and informative for investors having a wide range of sophistication who use or might use credit ratings? Commenters should identify and explain any other approach they believe could be used to prescribe a standard process for calculating and presenting transition and default rates that would better achieve this goal.*

Response: If the Commission decides to continue emphasizing default and transition rates as the primary disclosure of information about the performance of credit ratings, then the single cohort method is a reasonable approach. However, as discussed in our answer to question E.1.a20 below, its utility may become limited if a significant proportion of ratings transition into the "Withdrawn (other)" category. In addition, we strongly recommend maintaining the current content and presentation of the NRSRO exhibits which successfully incorporates multi-year and multi-sector transitions.

E.1.a2 *What practical issues should the Commission consider in implementing a standard process for calculating and presenting transition and default rates? For example, would the variances in the procedures and methodologies NRSROs use to determine credit ratings raise practical issues in terms of adhering to a standard process calculating and presenting transition and default rates? In addition, would the variances in the meanings and definitions NRSROs ascribe to the notches of credit ratings in their rating scales raise practical issues in terms of adhering to a standard process for calculating and presenting transition and default rates? How could the proposal be modified to address any practical issues identified without undermining the goal of comparability?*

Response: There may be a problem in standardizing transitions and defaults because individual NRSROs have their own definitions around default and transition studies. Given the clear variances in methodologies, it may not be reasonable to prescribe standardization to compare each study side by side in all cases. In addition, due to historic differences in inputs and methodologies, creating historically comparable transition and default data for NRSROs would not be feasible.

E.1.a3 *With respect to any practical issues identified in response to the solicitation of comment in question #2, would the proposed single cohort approach for calculating and presenting transition and default rates heighten or lessen the issues relative to other possible approaches such as the average cohort approach? Commenters should identify and explain any other approach they believe could be used to prescribe a standard process for calculating and presenting transition and default rates that would raise the least practical issues.*

Response: A single cohort approach for calculating and presenting transition and default rates is the best approach as it is, in our opinion, the clearest way to calculate a meaningful default rate.

E.1.a4 *Would the proposals require an NRSRO to disclose proprietary information? If so, describe the type or types of proprietary information. Also, describe potential ways to address this issue.*

Response: No. The proposal as stated would not require disclosure of proprietary information.

E.1.a5 *Would the proposals have an impact on competition? For example, would they advantage or disadvantage a certain type of NRSRO? Could they potentially alter the behavior of NRSROs? For example, could the proposals cause certain NRSROs to stop determining a particular type of credit rating? If so, describe whether there would be any costs or negative impacts as a result and, if so, how such costs or negative impacts could be addressed.*

Response: Further clarification is needed regarding which aspect of the proposal this particular question is specifically referencing. If the question refers specifically to a standard single cohort approach among NRSROs, Ratings Services does not believe this will directly impact competition.

E.1.a6 *How would the proposals differ from the way NRSROs currently calculate and present transition and default rates? For example, would they be more or less sophisticated than current methods? Would they be more or less burdensome than current methods? Describe the differences. Furthermore, describe the benefits of a standardized approach in terms of making the disclosure more useful to investors and other users of credit ratings.*

Response: From a practical implementation prospective, Ratings Services believes that this proposal would take a great deal of time, analysis, capital and resources to implement as it would require the mapping of existing categories to a prescribed standard classification system that does not exist today. From a technical implementation perspective, these proposals will be burdensome as they require the creation of new systems to accommodate changes to definitions. It is unclear how these proposed changes will provide any more useful insight to the market than current methods.

E.1.a7 *Would dividing the class of credit ratings for structured finance products into the subclasses identified in proposed paragraphs (1)(D)(i) through (vii) of the instructions for Exhibit 1 provide investors and other users of credit ratings with more useful information about the performance of an NRSRO's structured finance ratings? For example, should the Commission continue to require transition and default rates for this class only as a whole? If so, explain how this would provide more useful information about the performance of an NRSRO's structured finance ratings.*

Response: Dividing the class of credit ratings as proposed would tend to further increase market transparency.

E.1.a8 *Are the subclasses of credit ratings for structured finance products identified in proposed paragraphs (1)(D)(i) through (vii) of the instructions for Exhibit 1 the most appropriate way to stratify this class of credit ratings? For example, should the "other-ABS" subclass be divided up into subclasses based on the assets underlying the ABS (i.e., auto loans, auto leases, floor plan financings, credit card receivables, student loans, consumer loans, equipment loans or equipment leases)? In addition, are there other classes of structured finance products that should be identified in proposed paragraph (1)(D) of the instructions for Exhibit 1?*

Response: The underlying subclasses are suitable. However, there is a risk that greater stratification may in some cases produce subclasses that are too small to generate meaningful statistics.

E.1.a9 *Are the descriptions of the subclasses of credit ratings for structured finance products identified in proposed paragraphs (1)(D)(i) through (vii) of the instructions for Exhibit 1 sufficiently clear to provide an applicant and NRSRO with guidance as to which credit ratings should be included in the production of the Transition/Default Matrices for each subclass? How could the descriptions be modified to make them clearer and provide better guidance?*

Response: We believe the descriptions are sufficiently clear.

E.1.a10 *Would the design and presentation of a Transition/Default Matrix prescribed in proposed paragraph (3) of the instructions for Exhibit 1 be clear and informative for investors having a wide range of sophistication who use or might use credit ratings? How could the design and presentation of the Transition/Default Matrix be modified to better achieve this goal?*

Response: Based on the outlined explanations in paragraph (3), Ratings Services believes the proposal is generally clear and informative. However, the chart provided refers to issuer ratings, which are not relevant to payoffs, so further clarification is necessary. In addition, NRSROs may not currently distinguish between ratings on instruments that are paid off and withdrawn. Tracking this distinction going forward, to the extent it is not presently being done, will require significant systems changes. In addition, it may not be possible to track this distinction retroactively. Please also see our answer to question E.1.a19 in this regard.

E.1.a11 *Would the design and presentation of a Transition/Default Matrix prescribed in proposed paragraph (3) of the instructions for Exhibit 1 be an appropriate way to present transition and default rates? How could the design and presentation of the Transition/Default Matrix be modified to better accommodate these statistics?*

Response: The proposed Transition/Default Matrix is in line with Ratings Services' approach, with the exception of the separate tracking of ratings that have been paid off versus those that have been withdrawn for other reasons. As we note in our answer to question E.1.a10 above and elsewhere in this section, historically NRSROs may not have differentiated between ratings that were withdrawn because the security in question was paid off and those ratings that were withdrawn for other reasons.

E.1.a12 *Are the instructions in proposed paragraphs (1), (2), (3), and (4) of Exhibit 1 sufficiently clear in terms of requirements for producing the required Transition/Default Matrices and presenting necessary information in the Exhibit? For example, are instructions in the paragraphs sufficiently clear in terms of the requirements for populating the columns and rows of a Transition/Default Matrix? How could the instructions be modified to make them clearer and provide better guidance?*

Response: The proposed paragraphs are clear.

E.1.a13 *Should obligors, securities, and money market instruments that an applicant or NRSRO has classified as being in default as of the start date of a period covered by a Transition/Default Matrix be excluded from the start-date cohort for that matrix? If not, explain the rationale for including them.*

Response: Securities that are in a current state of default at the creation of the cohort should be excluded from the Transition/Default Matrix. Most existing methodologies used by NRSROs deal with this issue via a new data entry upon emergence of the security which would be included in future cohorts and count any subsequent defaults. While information about default emergence is of some use, it is best to present that data in table format as opposed to a transition matrix.

E.1.a14 *Should the start-date cohorts for the Transition/Default Matrices be comprised of obligors only (i.e., not include securities or money market instruments assigned credit ratings in the class or subclass)? For example, if the credit ratings of securities or money instruments issued by an obligor are simply a function of the credit rating of the obligor, would it be sufficient to include only the obligor in the start-date cohort? If so, should this be the case for all classes and subclasses of credit ratings or for certain classes and subclasses? For example, the credit ratings assigned to securities and money market instruments in the structured finance class often are based on differing levels of credit enhancement specific to each tranche of a security issued by the obligor. Consequently, in such a case, the credit rating of the security or money market instrument issued would not be a function solely or primarily of the credit rating of the obligor.*

Response: For asset classes described in proposed paragraphs (1)(D)(i) through (vi), the obligations/issues should be included in the start-date cohorts. Those transactions do not have obligors in a traditional sense, therefore to use only obligors and issuers for the studies would be an inaccurate representation of Ratings Services' ratings business. The majority of our structured finance and U.S. public finance business is reported at the instrument level. It would be extremely difficult to comply with the proposal as it would be a fundamental change in the existing business model. In addition, to incorporate issuers in the structured finance context is not logically feasible because they are treated fundamentally differently; the issuer in a structured finance transaction generally is a legal entity created to funnel cash flow, it is not the obligor of the debt.

E.1.a15 *Commenters are referred to the questions in Section II.M.4.a of this release with respect Items 6 and 7 of Form NRSRO and how certain types of obligors, securities, and money market instruments should be classified for purposes of providing approximate amounts of credit ratings outstanding in each class of credit rating for which an applicant is seeking registration (Item 6) or an NRSRO is registered (Item 7)? In responding to those questions, commenters should consider how proposed classifications could be applied to determining the composition of start-date cohorts for the purposes of the proposed enhancements to Exhibit 1.*

Response: We are uncertain as to the question that is being asked and are therefore unable to answer.

E.1.a16 *Should the default rates in the Transition/Default Matrices be determined using the proposed standard definition of Default? For example, would the use of a standard definition raise practical issues in light of the different meanings that NRSROs ascribe to the notches in their credit rating scales or the different definitions of "default" they utilize? How could the proposal be modified to address any practical issues identified without undermining the goal of comparability?*

Response: As further outlined in our response to E.1.a17 below, we propose instead that default rates in the Transition/Default Matrices be determined using an NRSRO's own definition of Default. The latter will be more inclusive of the events commonly understood as constituting a default. There are also practical issues in the proposed standard definition of Default: Ratings Services historically tracks defaults using our own rating definitions. In addition to significant process and system investment requirements which would be required to track the "standard" definition of default, any new data series would not be comparable with historical series.

E.1.a17 *Is the proposed standard definition of Default sufficiently broad to apply to most, if not all, events commonly understood as constituting a default? For example, should the definition explicitly include that the obligor or issuer of the security or money market instrument is in a bankruptcy proceeding or would this be redundant in that the definition already provides that the obligor or issuer of the security has failed to timely pay interest or principal due? In addition, should the definition explicitly include events that would constitute a default due to a breach of a covenant unrelated to the failure to timely pay interest or principal due on a security or money market instrument (e.g., a covenant might provide that a default by the issuer on a bank loan to a third party or a default by an affiliate of the issuer would constitute a default with respect to a rated security of the issuer)? Would it be appropriate to include such cross-default provisions as part of the definition of the Default in the instructions for Exhibit 1? For example, if the issuer continued to make timely payments of interest and principal to the holders of the security notwithstanding the cross-defaults, would it nonetheless be appropriate to classify the security as in Default? If so, how could the proposed definition be modified to make it broad enough to apply to all instances of default? Should the requirement provide for an NRSRO to be able to use its own definition if the standard definition would not be feasible given the NRSRO's procedures and methodologies for determining credit ratings? If so, should the NRSRO be required to make disclosures about why it is using its own definition? Describe the nature of such disclosures.*

Response: Ratings Services believes the proposed standard definition of default is not sufficiently broad to apply to most events commonly understood as constituting a default, and therefore would have unintended consequences. In particular, using this definition would omit a type of default event which is not uncommon, known as distressed exchanges. In addition, as noted in our response to question E.1.a above, the standard definition would fail to classify as defaults non-payment events on all instruments that legally constitute equity, including all securitization instruments that use "pass-through" trusts. The problem in the proposed rule is the reference to "according to the terms of an obligation." The legal terms of a pass-through instrument do not entitle the holder to receive anything more than is collected on the underlying trust assets. For purposes of rating a pass-through security, Ratings Services imputes the existence of a payment promise that does not actually exist under the terms of the instrument. On the other hand, Ratings Services believes that if the proposed definition of default included both the first definition of default ("standard definition"), which refers to failure to timely pay principal or interest due according to the terms of an obligation, and the second definition of default (an NRSRO's own definition), the combination would then be sufficiently broad to apply to most events we believe are commonly understood as constituting a default. In addition, Ratings Services believes that the definitions of default used by the largest NRSROs are roughly comparable, albeit not identical. Ratings Services believes rating agencies should be transparent on how they define default, and disclose this clearly in their default studies, so that investors can reasonably compare the default studies.

E1.a18 *Should the proposed standard definition of Default be refined to distinguish between degrees of default severity? For example, should the definition distinguish between a situation where an obligor or the issuer of a security or money market instrument has failed to make a timely payment of interest or principal that potentially could be cured and the situation where the obligor or issuer of the security or money market instrument is no longer able to cure a failed payment of interest or principal or is in a bankruptcy proceeding? How could the proposed definition be modified to account for relative degrees of default severity and how should such modifications be incorporated into the proposed instructions for calculating default statistics?*

Response: Ratings Services prefers to maintain our current default definitions which are issue- or issuer-based depending on the ratings class, both of which do not focus on "severity" as such a focus would potentially be highly subjective.

Practically speaking, it would be difficult to implement a classification for default severity in regards to default statistics. This would require an onerous commitment of resources and would involve creating and disseminating new criteria, updating the IT data collection platform, updating the statistics generating platform, and revising data that has already been collected. To the extent an NRSRO has not previously maintained detailed records about the severity of default, it may not be possible for it to revise historical data to include it. All in all, the time and effort that would be involved in creating this new statistic would far exceed the minimal benefit, if any, to be gained.

E.1.a19 *Is the proposed standard definition of Paid Off sufficiently broad to apply to most, if not all, events commonly understood as constituting the extinguishment of an obligation upon which a credit rating is based? If not, how could the proposed definition be modified to make it broad enough to apply to all instances that should, for the purposes of transition and default rates, be classified as having Paid Off? Should the requirement provide for an NRSRO to be able to use its own definition if the standard definition would not be feasible given the NRSRO's procedures and methodologies for determining credit ratings? If so, should the NRSRO be required to make disclosures about why it is using its own definition? Describe the nature of such disclosures.*

Response: Ratings Services believes that the notion of Paid Off as applied to obligors is not practicable. First, some rated obligors do not have rated debt. It would be difficult to track whether all obligations of an obligor are paid off—which in any case would be a very small percentage. In addition, even if a company has paid off its rated debt there is a possibility that they have unrated debt outstanding.

Ratings Services believes that the proposed standard definition of Paid Off with respect to obligations, as opposed to obligors, is sufficiently broad. However, the proposed rule's requirement to separately track rating withdrawals because of (i) repayments and (ii) for other reasons, likely would be impractical. Issuers may request that their ratings be withdrawn for many reasons. After an NRSRO withdraws a rating, it may never learn whether the security was paid off or if the issuer retired its debts. Ultimately determining whether an instrument is repaid, when the NRSRO no longer maintains a rating, and hence surveillance, on the instrument, would be burdensome and in many cases impractical. Absent a continuing rating relationship, an NRSRO may lack access to the information it would need in order to determine the final disposition of the instrument. Please also see our answer to question E.1.a10 in this regard.

Ratings Services' published default studies currently do not feature separate columns to distinguish securities "paid off," from securities where ratings are withdrawn for other reasons. In addition, withdrawals occur for reasons other than repayment or default. Mergers and acquisitions account for a portion of withdrawals (because one firm assumes the liabilities of another and the rating of the acquired firm is withdrawn).

E.1.a20 *Would the proposed treatment for Withdrawn (other) credit ratings in the Transition/Default Matrices sufficiently address the concern that an applicant or NRSRO might use* *withdrawals to make its transition and default rates appear more favorable? For example, should the Commission, by rule, require an NRSRO to monitor an obligor, security, or money market instrument after withdrawal in order to classify whether the obligor, security, or money market instrument went into Default or Paid Off? If so, how long should the applicant or NRSRO be required to monitor the obligor, security, or money market instrument? Alternatively, should the applicant or NRSRO be required to explain and disclose in Exhibit 1 the reason why it withdrew the credit ratings in the given class or subclass of credit ratings? If so, how much detail should the applicant or NRSRO provide in the description? Should the requirement provide for an NRSRO to be able to use its own definition if the standard definition would not be feasible given the NRSRO's procedures and methodologies for determining credit ratings? If so, should the NRSRO be required to make disclosures about why it is using its own definition? Describe the nature of such disclosures.*

Response: Ratings Services believes our current policies mitigate the potential concern that an applicant or NRSRO might use withdrawals to make its transition and default rates appear more favorable. Specifically, Ratings Services' "Credit Ratings Assignment, Withdrawal & Suspension Policy" requires that "under no circumstances will an issuer's request to withdraw a credit rating avoid an imminent downgrade." In other words, if an issuer, suspecting that a downgrade is imminent, requests that a credit rating be withdrawn, Ratings Services will first determine if the credit rating should be downgraded, and will do so before allowing the rating to be withdrawn. The same exercise is carried out if Ratings Services determines to withdraw a rating of its own volition.

As mentioned in our response to question E.1.a19, the proposed requirement to separately track rating withdrawals, because of repayments, and for other reasons, likely would be impractical in many cases. Ratings Services also believes that the Commission should not require, by rule, that an NRSRO monitor an obligor, security, or money market instrument after withdrawal in order to classify whether the obligor, security, or money market instrument went into default or paid off, chiefly because of the lack of information available to the NRSRO to perform such monitoring. After Ratings Services withdraws a rating in such a case, we may never learn whether the security was paid off or if the issuer retired its debts (however, whenever we learn of defaults, we include them in our published studies even if the rating was previously withdrawn.)

E.1.b1 *Is there any reason why the Commission should not apply the requirement to make an NRSRO's performance statistics "freely available on an easily accessible portion of its website" to Form NRSRO and the public Exhibits as a whole? For example, should the requirement apply only to Exhibit 1?*

Response: No. We agree with this requirement to the extent it does not require the disclosure of otherwise confidential information.

E.1.b2 *Is the Commission correct in its preliminary belief that a Form NRSRO would be on an "easily accessible" portion of a website if it could be accessed through a clearly and prominently labeled hyperlink to the Form on the home-page of the NRSRO's corporate Internet website? Are there other portions of an NRSRO's corporate Internet website that, provided the NRSRO placed a hyperlink to Form NRSRO on such portion of the website, should be deemed "easily accessible"?*

Response: We agree that Form NRSRO is easily accessible if it can be accessed through a clearly and prominently labeled hyper link on the home page of the NRSRO's website.

E.1.b3 *Is there another means of making Form NRSRO publicly available besides the Internet that should be deemed "another comparable, readily accessible means"? If so, identify the means and explain the potential advantages of permitting it as a means of disclosure.*

Response: No. The internet is the most appropriate means.

E.1.b4 *With respect to the proposed requirement that Exhibit 1 be made freely available in writing, when requested, how should an NRSRO meet such a request? For example, should an NRSRO be required to mail a written copy of Exhibit 1 to a party requesting the Exhibit? If so, would it be appropriate to permit the NRSRO to charge reasonable handling and postage fees? For example, would allowing an NRSRO to charge a reasonable handling and postage fee discourage requests that are not based on a legitimate need to obtain Exhibit 1 in paper form? In this regard, the Commission notes that Exhibit 1 currently can be immediately accessed through an NRSRO's corporate Internet website and, under the proposed amendments to paragraph (i) of Rule 17g-1, would need to be posted on an easily accessible portion of the NRSRO's corporate Internet website. Consequently, why would a person have a legitimate need to request that an NRSRO provide Exhibit 1 in paper form (which would take time to process the request and send out the Exhibit) when it could be obtained immediately through the Internet?*

Response: The Commission should not create a requirement that "a nationally recognized statistical rating organization must make its up-to-date Exhibit 1 to Form NRSRO freely available in writing to any individual who requests a copy of the Exhibit." Ratings Services believes that providing internet access to Form NRSRO should be sufficient to accomplish the intent of Section15E(q)(2)(D) of the Exchange Act because individuals can print out complete hard copies of a rating agency's Form NRSRO from their own computers. If the Commission believes further action is necessary to address this Section, it can require that the information maintained on the website be maintained in a way that fosters easy printing from the site. Ratings Services sees no reason for NRSROs to produce a paper format when it can be accessed via the web and printed. If the Commission nevertheless determines that NRSROs are obligated to produce hard copies upon request, NRSROs should have the ability to charge reasonable handling and postage fees.

E.2 *The Commission generally requests comment on all aspects of proposed new paragraph (b) of Rule 17g-7. The Commission also seeks comment on the following:*

E.2.1 *Should the 10% Rule be retained? For example, could it be enhanced to meet the requirement of Section 15E(q)(A) of the Exchange Act that disclosures be comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs? If so, how could the 10% Rule be modified to better meet this requirement? Moreover, even with such modifications, would an enhanced 10% Rule provide information to investors and other users of credit ratings that would be useful to assess the performance of credit ratings across NRSROs?*

Response: Ratings Services does not support retention of the "10% Rule" currently contained in Rule 17g-2(d)(2). We believe random sampling of ratings does not expedite comparison across

NRSROs. NRSROs currently have, and will continue to have, completely different 10% samples, which, as to a specific rating, will coincide only by happenstance. The utility of the 10% sample is therefore quite limited, and it will become even less significant as the database for the "100% reporting" grows.

E.2.2 *Should the proposed rule require that the disclosure of the ratings history information under the proposed enhancements to the 100% Rule be made freely available in writing, when requested? If so, how should an NRSRO meet such a request? For example, would an NRSRO be required to mail a written copy of information in the XBRL data file to a party requesting the information? If so, would it be appropriate to permit the NRSRO to charge reasonable handling and postage fees? Would such a requirement to provide a written copy of the information in the XBRL data file be feasible? Are there other ways an NRSRO could make this disclosure freely available in writing?*

Response: The output of the 100% Rule should not be made available in written format as it would be unduly burdensome to do so. Presently at Ratings Services, to comply with the 100% Rule we maintain more than 18,000 individual files containing approximately 1.5 million records. Producing a hard copy would mean printing tens of thousands of pages. It is doubtful that such huge volume of data could be effectively examined on paper. Therefore, we believe it is sufficient that the information is currently available on the NRSRO's website.

E.2.3 *If the rule required an NRSRO to provide a written copy of the information in the XBRL data file, when requested, under what circumstances would a party request this information in writing given that it would be freely available on an easily accessible portion of the NRSRO's corporate Internet website? Moreover, why would a party request the information in written form when downloading an electronic file in an XBRL format would make accessing and analyzing the information much more easy?*

Response: A request for information in written form is unlikely due to the sheer volume of the data. We cannot conceive of any reason why a party with a legitimate interest in this data would make such a request.

E.2.4 *Should the rule require that an NRSRO publish quarterly, bi-annual, or annual copies of the rating histories and that these be made available when requested to implement the "in writing" provision in the statute?*

Response: No. On-line publication is appropriate for comparing performance of NRSROs' ratings. Ratings Services does not recommend providing the rating histories in published format as they are readily available on-line.

E.2.5 *What practical issues should the Commission consider in implementing the proposed enhancements to the 100% Rule? For example, would the variances in the procedures and methodologies NRSROs use to determine credit ratings raise practical issues in terms of classifying and disclosing the proposed required information about a credit rating action? In addition, would the variances in the meanings and definitions that NRSROs ascribe to the categories of credit ratings in their rating scales raise practical issues in terms of classifying and disclosing the proposed required information about a credit rating action? How could the proposal be modified to* *address any practical issues identified without undermining the goal of making the data more useful in terms of the amount of information provided, the ability to search and sort the information, and the ability to compare historical rating information across NRSROs?*

Response: There would be practical issues due to the variances mentioned in question E.2.5. Differing performance data include, but are not limited to: different rating symbols, different identifiers, different populations of rated entities, and different definitions/criteria.

E2.6 *How long would it take an NRSRO to implement the proposed requirements and begin making the proposed disclosures? What steps would an NRSRO need to take to implement the proposed requirements?*

Response: To determine a reasonable estimate, specific and detailed business rules will need to be established for the new reporting requirements, following which it will be necessary to gauge the technical complexity of the changes and secure the necessary resources, in terms of personnel and material, to implement the identified changes. To accomplish the foregoing generally requires significant lead time.

E.2.7 *What practical issues should the Commission consider with respect to the proposed requirement to add histories for all credit ratings outstanding as of June 26, 2007 to the disclosure? How could the proposal be modified to address any practical issues identified without undermining the rule's goal of making the data more useful in terms of the amount of information provided, the ability to search and sort the information, and the ability to compare historical rating information across NRSROs?*

Response: Practically speaking, more data does not equal better data. The Commission should allow NRSROs to provide data in a different format, not thousands of individual files that make it impossible for them to be optimally useful to the investment community. Lastly, to the extent some of the proposed data requirements were not previously required, NRSROs either may not have, or find it very difficult to obtain or extract from their existing databases, the required information.

E2.8 *What practical issues should the Commission consider with respect to the proposed new requirement to disclose the name and CIK number of the issuer of a rated security or money market instrument? How could the proposal be modified to address any practical issues identified without undermining the goal of making the data more useful in terms of the amount of information provided, the ability to search and sort the information, and the ability to compare historical rating information across NRSROs?*

Response: The CIK Number is not always available for all entities and this mapping would have to be accomplished for existing internal identifiers for hundreds of thousands of entities.

Ratings Services recommends not requiring inclusion of the "legal name of the issuer of the security or money market instrument" in the published database of ratings. Entry of legal names in rating agency databases has been problematic because of inconsistent use of abbreviations. For example, consider (i) General Electric, (ii) GE, (iii) Gen'l Elec., and (iv) General Electric Co. The difficulty is compounded in the case of a firm with a complex organizational structure involving numerous subsidiaries and securitizations.

E.2.9 *What practical issues should the Commission consider with respect to the proposed new requirement to disclose the type of rating action? For example, are the proposed classifications a comprehensive list of the types of rating actions taken by NRSROs? If not, identify and describe any other types of rating actions. Would the disclosure of this data be useful to investors and other users of credit ratings? How could the proposal be modified to address any practical issues identified without undermining the goal of making the data more useful in terms of the amount of information provided, the ability to search and sort the information, and the ability to compare historical rating information across NRSROs?*

Response: Ratings Services believes that the classifications are appropriate except for the inclusion of affirmations. Affirmations are issued frequently and by the very nature of their name do not result in a change to the rating. Inclusion of affirmations within the covered categories of rating action would significantly increase the reporting burden on NRSROs, and would do nothing more than produce a record that there was no change to the rating in question. The Commission has not previously identified affirmations as rating actions for reporting purposes under Rule 17g-2(d) or elsewhere. In the release in which ratings history reporting requirements were first adopted, the Commission defined rating actions as "initial rating, upgrades, downgrades, placement on watch for upgrade or downgrade, and withdrawals." Rel. No. 34-59342, Feb. 3, 2009, at 17. Similarly, Rule 17g-3(a)(6) defines rating actions as "upgrades, downgrades, placements on credit watch, and withdrawals. Should the Commission determine, notwithstanding the significant burden it will engender, to include affirmations within its definition of rating actions, it should explicitly clarify that the term "affirmation" refers only to a published announcement (or written communication in the case of a private or confidential credit rating) by an NRSRO that it is maintaining the rating at its current level. The term should not include any purely internal discussions by an NRSRO about a credit.

E2.10 *With respect to the proposal to disclose the types of rating actions, are the three sub classifications proposed for the withdrawal classification sufficient? For example, should the rule further refine the "withdrawal for other reasons" sub-classification to require disclosure of certain other reasons that a credit rating might be withdrawn such as the obligor or issuer ceased paying for the credit rating?*

Response: The three subclasses proposed by the Commission capture the reasons that ratings may be withdrawn. It is possible, should the Commission so desire, to achieve greater granularity but this should be done in a manner compatible with reporting elsewhere. For example, the technical instructions for credit rating agencies reporting to the European Securities and Markets Authority's ("ESMA's") CRAs Reporting Instructions for the Central Repository for Credit Rating Agencies ("CEREP"), currently provide the following withdrawal classifications:

- Incorrect or insufficient information provided
- Bankruptcy of rated entity or debt restructuring
- Reorganization of rated entity (including merger or acquisition of rated entity)
- Maturity of the debt obligation
- Automatic invalidity of rating due to business model of CRA in case of a subscription based rating model (not applicable to Ratings Services)

- End of rating due to other reasons.

E.2.11 *What practical issues should the Commission consider with respect to the proposed new requirement to disclose the class or subclass of the credit rating? For example, are the descriptions of the subclasses of credit ratings for structured finance products sufficiently clear to provide an NRSRO with guidance as to how such credit ratings should be classified? How could the descriptions be modified to make them clearer and provide better guidance?*

Response: The Commission proposes that structured finance reporting be divided by the subclasses RMBS, CMBS, CLOs, CDOs, ABCP, other asset-backed securities, and other structured finance products. There is not universal agreement as to where the boundary lies between each of these subclasses, particularly with respect to what may constitute an "other asset-backed security" and what may constitute an "other structured finance product." The structured finance markets are characterized by an ever growing and evolving number of financing structures, many of which are intricately detailed and not easily capable of rigid categorization. Absent specific, definitive guidance from the Commission as to how structured finance securities are to be categorized, it is likely that NRSROs will differ as to the proper subclassification for securities that do not lend themselves to easy analysis.

E2.12 *Are the subclasses of credit ratings for structured finance products the most appropriate way to divide this class of credit ratings? For example, should the "other-ABS" subclass be separated into subclasses based on the assets underlying the ABS (i.e., auto loans, auto leases, floor plan financings, credit card receivables, student loans, consumer loans, equipment loans, or equipment leases)? In addition, are there other classes of structured finance products that should be identified?*

Response: Ratings Services has performed extensive mapping of internal collateral codes to asset/sub asset classes as set out in the CEREP. In the interest of global regulatory consistency and to avoid the burdens of inconsistent and duplicative regulation, Ratings Services urges the Commission to consider adopting the same codes as ESMA.

E.2.13 *Commenters are referred to the questions in Section II.M.4.a of this release with respect Items 6 and 7 of Form NRSRO and how certain types of obligors, securities, and money market instruments should be classified for purposes of providing approximate amounts of credit ratings outstanding in each class of credit rating for which an applicant is seeking registration (Item 6) or an NRSRO is registered (Item 7)? In responding to those questions, commenters should consider how proposed classifications could be applied for the purposes of proposed new paragraph (b)(2)(vi) of Rule 17g-7.*

Response: We are uncertain as to the question that is being asked and are therefore unable to answer.

E.2.14 *Is 20 years the appropriate amount of time to require that the ratings history for a withdrawn credit rating remain part of the disclosure? Should the rule require these histories be retained for a lesser period of time, such as 10 or 15 years or a greater period of time, such as 25* *or 30 years? If a different time period would be more appropriate, explain the rationale for such different time period.*

Response: Although it is possible to retain records for a 20-year period, the amount of data storage required would be considerable, and the ever-increasing volume of information on withdrawn ratings would exponentially grow the size of files. This would make the file less useful to investors.

E.2.15 *Are the existing 12 and 24 month grace periods appropriate? Should the Commission consider adopting a single grace period, rather than the existing bifurcated approach?*

Response: Ratings Services has consistently opposed regulation that treats NRSROs differently on the basis of business model. The Exchange Act does not authorize the Commission to discriminate between business models. To the contrary, one of Congress's express purposes in enacting the Exchange Act was to eliminate regulatory favoritism for one business model over another. As the accompanying Senate report noted, "Most importantly, the Act replaces the artificial barriers to entry created by the current Commission staff approval system with *a transparent and voluntary registration system that favors no particular business model...." (Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S.3850, Credit Rating Agency Reform Act of 2006,* S. Report No. 109-326 (109^{th} Cong., 2d Sess. (Sept. 6, 2006), p.7 [emphasis supplied].) For a more complete discussion of the reasons why Ratings Services does not believe it is appropriate for the Commission to maintain a bifurcated approach to disclosure of credit rating histories, please see its comment letter dated March 26, 2009 on *Re-proposed Rules for Nationally Recognized Statistical Rating Organizations*, Securities Exchange Act Rel. No. 59343 (Feb. 2, 2009), File No.S7-04-09.

<u>Section F--Credit Rating Methodologies — Rule 17g-8(a)</u>

F.1.1. *Are there alternatives to implementing Section 15E*(r) *of the Exchange Act (<u>i.e.</u>, other than requiring policies and procedures reasonably designed to achieve the objectives identified in the statute) that the Commission should consider? If so, please identify those alternatives and explain how they would better achieve the goals of Section 15E(r)?*

Response: Ratings Services generally supports the concept of new proposed Rule 17g-8(a), which closely tracks the text of Section 15E(r) of the Exchange Act. Ratings Services interprets the proposed rule to require that NRSRO Boards of Directors or their equivalent bodies approve the policies and procedures that are used to develop the NRSROs' criteria, methodologies and models. We do not interpret this proposed rule to require such Boards to approve the actual criteria, methodologies, or models themselves. In our view, any such requirement would not be feasible given the vast amounts of continually developing criteria utilized by NRSROs such as Ratings Services. Moreover, NRSRO board members, while they may possess a broad array of experience and qualifications, are typically not ratings analysts and generally will have no experience in the development of substantive ratings criteria, methodologies, and analytical models. Requiring Boards to oversee substantive ratings development would exceed the mandate of Section 15E(t)(3), which provides that "[i]n addition to the overall responsibilities of the board of directors, the board shall oversee . . . the establishment, maintenance, and enforcement of *policies and procedures* for determining credit ratings." (emphasis added). We believe that responsibility for the development of ratings criteria, methodologies, and analytical models should be in the hands of experienced ratings professionals, such as the independent criteria group that Ratings Services has established specifically for the purpose of approving all ratings criteria.

***F.1.2**. Would proposed paragraph (a)(1) of new Rule 17g-8 requiring an NRSRO to have policies and procedures that are reasonably designed to achieve the objective that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are approved by its board of directors or another body performing a function similar to that of a board of directors appropriately meet the mandate identified in Section 15E(r)(1)(A) of the Exchange Act? If not, how could the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures?*

Response: Ratings Services believes proposed paragraph (a)(1) of new Rule 17g-8 appropriately meets the mandate identified in Section 15E(r)(1)(A) of the Exchange Act.

***F.1.3.** Would proposed paragraph (a)(2) of new Rule 17g-8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the NRSRO appropriately meet the mandate identified in Section 15E(r)(1)(B) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures? In addition, how would this proposed requirement relate to the requirement in Section 15E(c)(3)(A) of the Exchange Act requiring an NRSRO to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings. For example, would procedures established under proposed paragraph (a)(2) of Rule 17g-8 be part of the internal control structure or would they be designed to achieve different goals?*

Response: We agree that proposed paragraph (a)(2) of new Rule 17g-8 appropriately meets the mandate identified in Section 15E(r)(1)(B) of the Exchange Act. Moreover, Ratings Services believes that this proposed rule appropriately provides that NRSROs shall adhere to their own procedures and methodologies, rather than providing authority for the Commission to impose any such procedures or methodologies, or otherwise interfere with an NRSRO's substantive ratings process. Accordingly, we believe that this proposed rule is consistent with Section 15E(c)(2) of the Exchange Act, which provides that the Commission's rules and regulations "shall be narrowly tailored to meet the requirements of this title" and that the Commission may not "regulate the substance of credit ratings or the procedures and methodologies by which any [NRSRO] determines credit ratings."

Ratings Services' procedures applicable to proposed paragraph (a)(2) are part of the internal control structure established by Ratings Services in accordance with Section 15E(c)(3)(A) of the Exchange Act.

However, it would be helpful for the Commission to clarify that paragraph (a)(2) does not require specific board approval where an NRSRO develops a model that is simply the embodiment of previously approved criteria.

F.1.4. *Would proposed paragraph (a)(3)(i) of new Rule 17g-8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are applied consistently to all credit ratings to which the changed procedures or methodologies apply appropriately meet the mandate identified in Section 15E(r)(2)(A) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures?*

Response: We believe that proposed paragraph (a)(3)(i) of new Rule 17g-8 appropriately meets the mandate identified in Section 15E(r)(2)(A) of the Exchange Act. The Commission may wish to clarify, however, that proposed paragraph (a)(3)(i) is applicable only to changes to procedures and methodologies that may impact new credit ratings, and that the implementation of changes affecting existing ratings are addressed separately in subsection (a)(3)(ii), which incorporates "a reasonable period of time" standard for purposes of such implementation.

F.1.5. *Would proposed paragraph (a)(3)(ii) of new Rule 17g-8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are, to the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to then-current credit ratings within a reasonable period of time taking into consideration the number of ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated appropriately meet the mandate identified in Section 15E(r)(2)(B) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures?*

Response: We believe that proposed paragraph (a)(3)(ii) of new Rule 17g-8 appropriately meets the mandate identified in Section 15E(r)(2)(B) of the Exchange Act.

F.1.6. *With respect to proposed paragraph (a)(3)(ii) of new Rule 17g-8, should the Commission consider prescribing specific time frames such as 1, 2, 3, 4, 5, 6 or more months to apply the new procedures and methodologies to existing credit ratings? Should the time frame depend on the methodology used to determine credit ratings (<u>i.e.</u>, quantitative as opposed to qualitative)? As another alternative, should the Commission prescribe a timeframe based on the number of outstanding credit ratings? For example, should the Commission consider requiring that the new procedures and methodologies be applied to existing credit ratings in tranches such as 10 credit ratings per week or 60 credit ratings per month or some other ratio of the period of time to the number of credit ratings? Should such a ratio depend on the methodology used to determine credit ratings (<u>i.e.</u>, quantitative as opposed to qualitative)?*

Response: Ratings Services does not support the establishment of prescribed time frames to apply new procedures and methodologies to existing credit ratings. To the contrary, we believe, as the Commission has appropriately recognized in this proposed rule, that the definition of what constitutes "a reasonable period of time" to apply new procedures and methodologies to existing ratings can vary substantially from case to case. For example, the time necessary to implement such changes will depend on the complexity of the new procedures and methodologies, as well as the type of obligor, security, or money market instrument being rated.

We believe it would be very difficult, and in many cases impossible, for the Commission to establish such prescribed time frames in any consistent and principled manner. For example, the proposed rule commentary suggests that prescribed time frames could vary based on certain factors, including whether a new criteria or methodology is considered to be "quantitative as opposed to qualitative." In fact, most ratings criteria and methodologies include some combination of quantitative and qualitative factors. It is not practical, therefore, to categorize criteria in this manner for purposes of defining what constitutes a "reasonable period of time" for implementation. We do note, however, notwithstanding our concerns with the establishment of a fixed time frame to apply new procedures and methodologies, that a requirement to this effect is contained in the European Union credit rating agency regulation, and would urge the Commission, if it does prescribe a time frame, to allow at least as much time as is available under the European Union regulation.

F.1.7. *Would proposed paragraph (a)(4)(i) of new Rule 17g-8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure that the NRSRO promptly publishes on an easily accessible portion of its corporate Internet website material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the NRSRO uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current ratings appropriately meet the mandates identified in Sections 15E(r)(3)(B), 15E(r)(2)(C) and 15E(r)(3)(D) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures?*

Response: We believe that proposed paragraph (a)(4)(i) of new Rule 17g-8 appropriately meets the mandate identified in Sections 15E(r)(3)(B), 15E(r)(2)(C) and 15E(r)(3)(D) of the Exchange Act. However, the language of paragraph (a)(4)(i) should be clarified to state that, to the extent an update to a model is primarily the embodiment of approved changes in criteria, the rule would not require that the board separately approve the model update.

F.1.8. *Would proposed paragraph (a)(4)(ii) of new Rule 17g-8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure the NRSRO promptly publishes on an easily accessible portion of its corporate Internet website significant errors identified in a procedure or methodology, including a qualitative or quantitative model, the NRSRO uses to determine credit ratings that may result in a change in current credit ratings appropriately meet the mandates identified in Section 15E(r)(3)(C) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures? For example, should the Commission define "significant error"? If so, how should the term be defined? Should the definition establish a materiality threshold? If so, how should such a threshold be prescribed? Similarly, should the Commission interpret the term "may result in a change in current credit ratings" to, for example, clarify the level of likelihood necessary to trigger the reporting requirement? For example, should there be a reasonable likelihood that the error may result in a change in current credit ratings?*

Response: We believe that proposed paragraph (a)(4)(ii) of new Rule 17g-8 appropriately meets the mandate identified in Section 15E(r)(3)(C) of the Exchange Act. Ratings Services does not believe that the Commission should attempt to define the term "significant error," either through a materiality threshold or some other measure. Ratings Services' own error correction policy, available as part of our publicly filed Form NRSRO, provides in relevant part that "we will act quickly to correct any identified errors" and requires employees "to promptly report any material errors discovered." Once discovered, such errors must be reported and corrected as quickly as reasonably possible. The policy provides that if a public credit rating or Credit Watch and/or outlook is ultimately adjusted because of the discovery of an error, the revised rating or Credit Watch and/or outlook will be published along with a revised "credit rating rationale" that incorporates a statement about the error and the corrections made.

We have found that our error correction policy has proven to be effective and, where errors have occurred, our practice of reacting swiftly and transparently has benefited the market. We also believe that it would be appropriate for the Commission, as part of its oversight authority, to examine NRSROs' adherence to such policies. We do not believe, however, that the market would gain any additional benefit from the imposition by the Commission of requirements and definitions of what constitutes a "significant error" that must be disclosed. Because credit ratings reflect the subjective opinions of a committee of ratings analysts and often incorporate both quantitative and qualitative factors, we believe it would be difficult, if not impossible, for the Commission to establish a principled definition for what might have constituted a "significant error."

Of course, if an NRSRO ultimately determined, in its own exercise of independent analytical judgment, that a correction of an error necessitated a change to an existing rating, the NRSRO should (and consistent with the Commission's rules, must) publish such a revised rating. However, the imposition of an arbitrary definition of "significant error" could result in situations where an NRSRO is compelled to identify errors even where, according to the best analytical judgment of the NRSRO, such errors are minor and their correction does not result in any ratings action or other communication to the market. Any such requirement could have the effect of causing unnecessary disruption in the markets and could also run afoul of Section 15E(c)(2) of the Exchange Act, which provides that the Commission may not "regulate the substance of credit ratings or the procedures and methodologies by which any [NRSRO] determines credit ratings." In our view, the better alternative, consistent with other provisions of Section 15E and these Rules, would be for the Commission to use its oversight authority to ensure that NRSROs are in fact complying with their own independent, publicly available error correction policies.

F.1.9. *Would proposed paragraph (a)(5) of new Rule 17g-8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure that it discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating appropriately meet the mandates identified in Sections 15E(r)(3)(A) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures?*

Response: We believe that proposed paragraph (a)(5) of new Rule 17g-8 appropriately meets the mandate identified in Sections 15E(r)(3)(A), 15E(r)(2)(C) and 15E(r)(3)(D) of the Exchange Act. However, the language of paragraph (a)(5) should be clarified to state that the requirement to publish the version of criteria used for a particular rating applies only when there is an action on the rating, such as an upgrade, downgrade or withdrawal.

Section G—Form and Certification to Accompany Credit Ratings

G.1 *The Commission generally requests comment on all aspects of proposed prefatory text to paragraph (a) of Rule 17g-7. The Commission also seeks comment on the following:*

***G.1.1** What practical issues should the Commission consider in implementing the proposal that an NRSRO publish the form and the certifications every time the NRSRO takes a rating action? For example, should the certifications only be required to be included with the publication of an expected, preliminary, or initial credit rating or do they remain relevant for the term of the rated security or money market instrument and, therefore, should they continue to be published with subsequent rating actions? How could the proposal be modified to address any practical issues identified without undermining the goal of making this information available to users of the NRSRO's credit ratings?*

Response: Ratings Services believes that, while an information form accompanying a credit rating may provide useful disclosure for investors and other users of credit ratings, the form must not be so lengthy and overburdened with detail that it loses its utility. More specifically, we believe that such a form should comport with the requirement in proposed Rule 17g-7(a)(1)(A) that it be easy to use and helpful. We are concerned that, as proposed, the information form would require a level of detail that far surpasses what most users of credit ratings would find of practical use, while imposing unnecessary burdens on NRSROs. For the reasons stated in our answer to E.2.9, we also do not believe that affirmations should be included together with rating actions to which the information publication requirement will apply.

***G.1.2** What practical issues should the Commission consider in implementing the proposal that an NRSRO publish the form and the certifications in the same medium and make it available to the same persons who can receive or access the credit rating resulting from or subject to the rating action? How could the proposal be modified to address any practical issues identified without undermining the goal of making this information available to users of the NRSRO's credit ratings?*

Response: Credit ratings are typically published and re-published in numerous formats through a disparate array of media, including the Internet, press releases, newspapers, broadcast television and radio, news "tickers" and the like. It is not feasible to include the referenced form and certification in all such transmissions. To ensure consistent, transparent access to the form and certifications, the Commission should simply require that they be made readily available on the NRSRO's public website, consistent with prevailing disclosure norms.

***G.1.3** What practical issues should the Commission consider in implementing the proposal to apply provisions of the current note to Rule 17g-7 – that the term "rating action" includes the publication of any expected or preliminary credit rating by the NRSRO – to all of the information required under Rule 17g-7 as it would be amended under these proposals? How could the proposal be modified to address any such practical issues without undermining the goal of the disclosure requirements currently contained in Rule 17g-7, that is, to make available to investors, if a credit rating is issued with respect to an asset- backed security, a description of: (1) the representations, warranties, and enforcement mechanisms available to investors; and (2) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities?*

Response: Given the volume of information required to be included in the information form and the preparation time needed, it is possible that the timing of rating publication will be pushed back, particularly with respect to preliminary ratings.

G.1.4 *The Commission has proposed to require issuers of asset-backed securities using a registration statement on proposed Form SF-3 to file a preliminary prospectus, under proposed Rule 424(h), containing transaction-specific information at least 5 business days in advance of the first sale of securities in the offering in order to allow investors additional time to analyze the specific structure, assets, and contractual rights regarding each transaction. Should the Commission explicitly require that the disclosures required by Rule 17g-7 be provided no later than the time of the proposed Rule 424(h) preliminary prospectus?*

Response: NRSROs are not participants in the offering process and do not take any part in the marketing effort for the sale of the securities. Therefore, NRSROs are often not aware of the scheduled date of the first sale in the offering unless the issuer or the underwriter informs them of their target for such date. The date of the offering might subsequently be moved by the issuer and the underwriter, which could move the date of the first sale, and the NRSRO might not be notified of such change. NRSROs cannot commit to making these disclosures in this fixed timeframe as it is beyond their control when they will receive the relevant information needed to comply. In addition, it is a frequent occurrence that a rating is assigned on an issuance well after the actual closing and first sale of the transaction. Therefore, requiring NRSROs to represent that they will disclose certain information five business days prior to the first sale in the offering is unrealistic.

Importantly, such a rule could have the effect of requiring an NRSRO to publish a rating prematurely, before the NRSRO has had an opportunity to request and/or evaluate relevant information related to the security. This would be an untenable situation for Ratings Services, which has in place a well-established policy providing that it will only publish ratings where it has determined that it has sufficient information. Moreover, such a requirement would plainly interfere with NRSROs' analytical independence in violation of Section 15E(c)(2) of the Exchange Act (prohibiting regulation of the substance of credit ratings).

G.1.5 *If the NRSRO publishes its credit ratings via a press release disseminated through its corporate Internet website and/or through other electronic information providers, would it be appropriate to permit the NRSRO to accomplish the required disclosure by publishing the credit rating and information in the press release on the form along with the required contents of the form (as discussed below) and, if applicable, attaching any relevant certifications to the form? What other methods could be used to make the required disclosures?*

Response: As stated in our response to G.1.1 above, we believe that publication of the form on the NRSRO's public website should suffice.

G.2 *The Commission generally requests comment on all aspects of proposed paragraph (a)(1)(ii) of proposed Rule 17g-7. The Commission also seeks comment on the following:*

G.2.1 *Is the objective that the form be easy to use and helpful for users of credit ratings to understand the information contained in the report sufficiently clear to provide NRSROs with guidance on how to present the information in the form in accordance with this proposed requirement? If not, how should the proposal be modified to provide better guidance? Commenters should provide specific suggested rule text and explain the rationale for it.*

Response: The proposed wording is adequate and additional clarification is not required.

G.2.2 *Is the objective that the content described in proposed paragraphs (a)(1)(ii)(K), (L) and (M) of Rule 17g-7 be disclosed in a manner that is directly comparable across types of obligors, securities, and money market instruments sufficiently clear to provide NRSROs with guidance on how to present this information in the form in accordance with this proposed requirement? If not, how should the proposal be modified to provide better guidance? Commenters should provide specific suggested rule text and explain the rationale for it. In addition, how would adding "obligors" and "money market instruments" to the presentation requirement expand its scope? Finally, the Commission requests commenters to provide examples of disclosures in these areas that are being made now (if such disclosures are being made) and how the disclosures might be presented under the proposed requirements.*

Response: As currently worded, it is possible that different NRSROs will reach different conclusions about the level of detail required to address paragraphs (a)(1)(ii)(K), (L) and (M). In addition, as we explain in various answers within Sections E, F and J, Ratings Services' ratings do not connote a particular expectation of a probability of default. Instead, they must be understood as presenting our assessment of relative, as opposed to absolute, likelihood of default. Due to the differing approaches to the meaning of default at different NRSROs, the information from one may not be directly comparable to another. This also holds true with respect to explanations of the level of volatility that may lead to a change in a credit rating. Moreover, it is difficult if not impossible to identify any singular factor that "might lead" to a change in credit rating, or to produce an all-inclusive list. In response to this requirement it would be more meaningful for an NRSRO to discuss the application of its criteria and particular methodologies to changes in circumstances.

Paragraph (a)(1)(ii)(K) also would require an explanation of the magnitude of the change in a rating that could occur under different market conditions. There may be an infinite number of "different market conditions," with varying degrees of significance (for example, moderate inflation, hyper inflation, deflation, stagnation, etc.). This may hamper the ability to compare information across ratings of different NRSROs. Further, we do not believe it would be appropriate for the Commission to mandate that specific conditions be assumed, as such might not have the same degree of relevance in all situations. Accordingly, we believe that each NRSRO should decide for itself what conditions merit discussion in light of the characteristics of the rated instrument and whatever other information the NRSRO believes it is appropriate to take into account.

Please also see our response to question G.3.18 below.

G.2.3 *Should the Commission require that the below information an NRSRO must include in the form be presented in a certain order to enhance comparability? For example, should the Commission require that the information be disclosed in the order in which it is identified in proposed paragraph (a)(1)(ii) of Rule 17g-7 discussed below? Are there other means of enhancing the comparability of forms among NRSROs? For example, should the Commission require a more standardized format for the form?*

Response: We do not believe there would be a benefit to investors for the Commission to standardize the presentation of the information among NRSROs. Depending upon the nature of different offerings, there may be circumstances where it will enhance the presentation of the information and enhance investor understanding for the order to vary from that set forth in the proposed Rule.

G.3 *The Commission generally requests comment on all aspects of proposed paragraph (a)(1)(ii) of proposed Rule 17g-7. The Commission also seeks comment on the following:*

G.3.1 *With respect to proposed paragraph (a)(1)(ii)(A), should the Commission consider requiring the disclosure of information in addition to the identity of the obligor's legal name and any other name that the obligor uses in its business? Are there additional or alternative ways to identify the obligor? Also, provide examples of how this disclosure might appear on the form.*

Response: Please see our response to question E.2.8 with regard to concerns over obligor identification.

G.3.2 *With respect to proposed paragraph (a)(1)(ii)(A), should the Commission consider requiring the disclosure of information in addition to the name of the security or money market instrument, if applicable, and a description of the security or money market instrument? Are there additional or alternative ways to identify the security or money market instrument? Would disclosing the CUSIP alone be sufficient to identify the security or money market instrument? If so, should the Commission consider requiring that the CUSIP be disclosed? Also, provide examples of how this disclosure might appear on the form.*

Response: Subject to assuring the rights of owners of proprietary information are observed, NRSROs should be required to identify securities, issuers and obligors with the level of detail they believe to be reasonably sufficient. Generally the obligor's name, and when applicable, the issue, class and maturity date should be sufficient.

G.3.3 *With respect to proposed paragraph (a)(1)(ii)(B), would the disclosure of the version of the procedure or methodology used to determine the credit rating in conjunction with proposed paragraph (a)(5) of Rule 17g-8 achieve the goals of Section 15E(r)(3)(A) of the Exchange Act? If not, what alternative or additional requirements should the Commission consider? Also, provide examples of how this disclosure might appear on the form.*

Response: In principle, we believe that the proposed expectation to present a rating-by-rating disclosure is feasible and we are exploring linking criteria to the individual elements of a rating. However, the actual benefit to investors is slight; investors who want to see criteria can access this content quickly through our public website.

Additionally, we believe that an NRSRO should have internal policies and guidance procedures for criteria development and dissemination that specify the process for documenting criteria, publishing new or revised criteria, and notifying the public and investors of the potential impact of criteria on existing credit ratings through published requests for comment (where appropriate) and advance notices of proposed criteria changes. Such guidelines should stipulate that criteria must be disseminated externally through published documentation and reinforce several key principles:

(i) the NRSRO rates issuers and obligations in accordance with its criteria;
(ii) existing criteria remain effective until withdrawn or replaced by new criteria;
(iii) the NRSRO has a defined process for developing, approving and documenting its criteria; and
(iv) the NRSRO publishes its criteria to promote transparency of its ratings.

G.3.4 *Proposed paragraph (a)(1)(ii)(C) of Rule 17g-7 would require an NRSRO to disclose in the form the main assumptions and principles used in constructing the procedures and methodologies used to determine the credit rating, including qualitative methodologies and quantitative inputs and, if the credit rating is for a structured finance product, assumptions about the correlation of defaults across the underlying assets. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form. In addition, would the proposal require the disclosure of proprietary information? If so, what type or types of proprietary information would be disclosed? How could this issue be addressed?*

Response: Many of these disclosures are similar to disclosures required in other jurisdictions, including the European Union. We propose that in the interest of fostering consistent regulation globally, the Commission harmonize its requirements with those of the European Union on the disclosure issues raised in these questions.

G.3.5 *Proposed paragraph (a)(1)(ii)(D) of Rule 17g-7 would require the NRSRO to disclose in the form the potential limitations of the credit rating, including the types of risks excluded from the credit rating that the NRSRO does not comment on, including, as applicable, liquidity, market, and other risks. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.*

Response: The proposed wording is adequate and additional clarification is not required.

G.3.6 *Proposed paragraph (a)(1)(ii)(E) of Rule 17g-7 require the NRSRO to disclose in the form information on the uncertainty of the credit rating, including: (1) information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and (2) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including: any limits on the scope of historical data; and any limits in accessibility to certain documents or other types of information that would have better informed the credit rating. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form. In addition, would the proposal require the disclosure of proprietary information? If so, what type or types of proprietary information would be disclosed? How could this issue be addressed?*

Response: Requiring NRSROs to provide overly detailed information regarding "reliability," "accuracy" and "quality" of the data would present practical, and possibly contractual, difficulties. First, depending on what is required, such disclosures could be extremely lengthy given the vast array of data types that may be used in a rating analysis and may, as a result, be of limited use to the users of ratings or discourage those users from reading the information completely. Second, some data received by NRSROs in the rating process is proprietary and/or confidential and thus there are limitations on the type of disclosures that could be made about such data.

We urge the Commission to require only a statement about: (i) whether essential data was available; (ii) whether such data was believed to be reliable; and (iii) any limitations on access to data for that transaction that differed from typical circumstances. To make such disclosures, NRSROs may establish or use existing internal processes to monitor information reliability, accuracy and quality. This approach also would be broadly consistent with requirements in other jurisdictions that regulate credit rating agencies.

G.3.7 *Proposed paragraph (a)(1)(ii)(F) of Rule 17g-7 would require the NRSRO to disclose in the form whether and to what extent third-party due diligence services were used by NRSRO organization, a description of the information that such third-party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third-party? Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.*

Response: Unless the third-party due diligence service was engaged by the NRSRO, any disclosure of this nature would more appropriately be made by the party that hired the due diligence provider. The NRSRO could indicate whether it received and made any use of information produced by a third-party due diligence provider and made available to the NRSRO, but it will generally not be in a position to disclose, other than based on indirect (possibly third-hand) knowledge, what information such third-party due diligence provider reviewed.

G.3.8 *With respect to proposed paragraph (a)(1)(ii)(F) of Rule 17g-7, how should the findings and conclusions of any third-party due diligence report made publicly available by the issuer or underwriter pursuant to Section 15E(s)(4)(A) of the Exchange Act be incorporated into the disclosure if used by the NRSRO? Similarly, how should any certifications the NRSRO receives from providers of third-party due diligence services pursuant to Section 15E(s)(4)(B) of the Exchange Act be incorporated into the disclosure if used by the NRSRO? Also, provide examples of how this disclosure might appear on the form.*

Response: Disclosure regarding the findings and conclusions of third-party due diligence reports should be made by NRSROs in the same manner as disclosure they make regarding other types of reports (e.g., audit reports, appraisal reports) that an analyst may review and consider as part of the rating process. Certifications received by an NRSRO from a provider of third-party due diligence services should be incorporated into the NRSRO's disclosure about the reliability, accuracy and quality of data it has received in accordance with our answer to question G.3.6.

G.3.9 *Proposed paragraph (a)(1)(ii)(G) of Rule 17g-7 would require the NRSRO to disclose in the form, if applicable, how servicer or remittance reports were used, and with what frequency, to conduct surveillance of the credit rating? Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.*

Response: The proposed wording is adequate and additional clarification is not required.

G.3.10 *Proposed paragraph (a)(1)(ii)(H) of Rule 17g-7 would require the NRSRO to disclose in the form a description of the data about any obligor, issuer, security, or money market instrument that was relied upon for the purpose of determining the credit rating? Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.*

Response: This requirement is not clear and potentially imposes nebulous disclosure requirements that may result in effectively overloading investors with information and essentially reducing rather than enhancing the value of the disclosure. In addition, certain of the data may be confidential or provided under contractual terms that restrict its public disclosure.

G.3.11 *Proposed paragraph (a)(1)(ii)(I) of Rule 17g-7 would require the NRSRO to disclose in the form a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the NRSRO in rating similar obligors, securities, or money market instruments. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.*

Response: This extends the question in G.3.6 (see response above). As we noted there, requiring NRSROs to provide detailed information regarding "reliability," "accuracy" and "quality" of the information available and considered in producing a credit rating would present practical, and possibly contractual, difficulties. Consistent with our answer to question G.3.6, we urge the Commission to require only a statement about: (i) whether essential data was available; (ii) whether such data was believed to be reliable; and (iii) any limitations on access to data for that transaction that differed from typical circumstances.

G.3.12 *With respect to proposed paragraph (a)(1)(ii)(J)(1) of Rule 17g-7, are the proposed definitions of "solicited sell-side", "solicited buy-side", and "unsolicited" credit ratings sufficiently clear? If not, how should the definitions be augmented or altered? Also, provide examples of how this disclosure might appear on the form.*

Response: The proposed wording is adequate and additional clarification is not required.

G.3.13 *With respect to proposed paragraph (a)(1)(ii)(J)(1) of Rule 17g-7, would distinguishing between "solicited sell-side" and "solicited buy-side" credit ratings provide useful disclosure of potentially different conflicts of interest? Alternatively, should the disclosure more simply require classification of whether the credit rating was "solicited" or "unsolicited"? Also, provide examples of how this disclosure might appear on the form.*

Response: We believe that the distinction of solicited or unsolicited is sufficient.

G.3.14 *With respect to proposed paragraph (a)(1)(ii)(J)(2) of Rule 17g-7, would the proposed disclosure of whether the NRSRO provided other services to the person that paid for the credit rating during the most recently ended fiscal year provide useful disclosure of potential conflicts of interest? Also, provide examples of how this disclosure might appear on the form.*

Response: We do not believe this would constitute a useful disclosure of potential conflicts of interest. The fact that the party paying for the rating received other non-ratings services during the most recent fiscal year provides no basis to conclude that the rating may be compromised. Requiring such a disclosure would cast doubts about the quality of the rating and could affect market confidence. That result is unnecessary, and, given the lack of any evidence that such conflicts actually exist, would be inappropriate. Moreover, the Commission, through the regulations it has promulgated since 2006, already requires NRSROs to take significant steps to identify potential conflicts of interest and adopt measures to prevent them from becoming actual conflicts. We do not believe that the proposed disclosure would add meaningfully to the existing regime.

G.3.15 *With respect to proposed paragraph (a)(1)(ii)(J) of Rule 17g-7, is there other information about conflicts of interest that the Commission should consider requiring to be disclosed in the form? Commenters should provide specific examples of such information and explain how it would provide useful information. Also, provide examples of how this disclosure might appear on the form.*

Response: Please see our responses in Section II.C.

G.3.16 *Proposed paragraph (a)(1)(ii)(K) of Rule 17g-7 would require the NRSRO to disclose in the form an explanation or measure of the potential volatility of the credit rating, including: (1) any factors that might lead to a change in the credit rating; and (2) the magnitude of the change that could occur under different market conditions. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form. Should the Commission provide guidance on the types of factors that should be disclosed to establish a materiality threshold? If so, describe the factors and the corresponding materiality threshold. Furthermore, should the Commission define the term "might lead to a change in the credit rating" to establish the level of probability necessary to trigger the disclosure? If so, how should the term be defined?*

Response: Please see our response to question G.2.2 above insofar as it pertains to paragraph (a)(1)(ii)(K).

G.3.17 *Proposed paragraph (a)(1)(ii)(L) of Rule 17g-7 would require the NRSRO to disclose in the form information on the content of the rating, including: (1) if applicable, the historical performance of the rating; and (2) the expected probability of default and the expected loss in the event of default. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.*

Response: The proposed requirement is sufficiently explicit. However, please see our response to question J.1.1 below with respect to probability of default.

G.3.18 *With respect to proposed paragraph (a)(1)(ii)(M) of Rule 17g-7 would require the NRSRO to disclose in the form information on the sensitivity of the rating to assumptions made by the NRSRO, including: (1) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and (2) an analysis, using specific examples, of how each of the 5 assumptions identified in the form impacts a rating? Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form. In addition, would the proposal require the disclosure of proprietary information? If so, what type or types of proprietary information would be affected? How could this issue be addressed?*

Response: The proposed requirement is sufficiently explicit, but it is nonetheless difficult, if not impossible, to articulate rating sensitivities in, or translate them to, singular variables. This is because (i) variables may be cross-dependent (e.g., interest rate, unemployment and mortgage delinquency levels may all interrelate), and (ii) each assumption may play out differently in different economic scenarios. Further, sensitivity will depend on the magnitude of deviation from the original assumption. Accordingly, and recognizing that notwithstanding these issues the Commission must address the directives in Section 15E(s)(3)(b)(iii) of the Exchange Act, we recommend that the Commission clarify that: (i) the change in each assumption be considered independent (that is, all other assumptions hold steady), and (ii) sensitivity may be expressed using a directional articulation (i.e., a downgrade or upgrade), with each NRSRO to determine on its own what level of variance indicates sensitivity relative to the variable under consideration. Please also see our response to question G.2.2 above.

G.3.19 *Is the proposal to codify the current requirements in paragraphs (a) and (b) of Rule 17g-7 in proposed paragraph (a)(1)(ii)(N) of Rule 17g-7 appropriate? For example, would this re-designation change those requirements in some manner?*

Response: Ratings Services believes that it is not appropriate to include the current requirements of paragraphs (a) and (b) of Rule 17g-7 in proposed paragraph (a)(1)(ii)(N) of the Rule. As the Commission indicates in the Release, Section 15E(s)(1) of the Exchange Act requires that the information form contain (a) information relating to the assumptions underlying the credit rating procedures and methodologies, and (b) information that can be used by investors and other users of credit ratings to better understand credit ratings. To this end, the subsections of proposed paragraph (a)(1)(ii) preceding paragraph (N) address matters that are relevant to credit analysis and rationale.

The disclosures required by current paragraphs (a) and (b) of Rule 17g-7 are unrelated to credit analysis and rationale. They are not relevant to the assumptions underlying Ratings Services' credit rating procedures and methodologies and consequently do not in and of themselves help investors better understand the credit rating process. Inclusion of this information in a form which is otherwise focused on the analytical process therefore appears potentially confusing.

In addition, including the current requirements of paragraphs (a) and (b) of Rule 17g-7 in proposed paragraph (a)(1)(ii)(N) would indeed change those requirements. At present, the Rule 17g-7 disclosures are required to be made in connection with the publication of a credit rating report. As proposed, these disclosures would become part of an information form required to be published in connection with each rating action. Such actions would not necessarily be accompanied by the issuance of a credit rating report. As a result, the triggering mechanism for the required disclosure would shift from the issuance of a credit rating report to the taking of a credit rating action. Ratings Services believes that, to the extent the disclosure currently required under Rule 17g-7 is necessary, it is more appropriate to tie such disclosure to the issuance of credit rating reports than to the taking of credit rating actions.

G.4 *The Commission generally requests comment on all aspects of proposed paragraph (a)(1)(iii) of proposed Rule 17g-7.*

G.4.1 *The Commission also seeks comment on the following: 1. Are there alternative means of implementing Section 15E(q)(2)(F) with respect to the attestation requirement? For example, should Section 15E(q)(2)(F) be implemented in proposed provisions requiring NRSROs to disclose information about the performance of credit ratings (i.e., the proposed Form NRSRO Exhibit 1 Transition/Default Matrices and/or the proposed ratings histories disclosure requirement)? If so, how would the attestation requirement be made a part of either of these other proposals?*

Response: We believe that the most appropriate manner in which to deal with attestation required by Section 15E(q)(2)(F) is to adapt it to disclosure credit rating agencies registered in the European Union and Hong Kong are already required to make. In both of those jurisdictions, in response to requirements to provide the name of an individual responsible for approving a rating, we name the chair of the rating committee that in fact approved the rating. It is implicit that such approval necessarily constitutes an attestation that the rating has been determined in accordance with applicable policies and criteria. This would encompass, among other things, determinations that to the best of the approver's knowledge, the credit rating was not influenced by any other business activities, the credit rating was based solely on the merits of the obligor, security or money market instrument being rated, and that the credit rating was an independent evaluation of the risks and merits of the obligor, security or money market instrument.

G.4.2 *What person within the NRSRO has responsibility for the credit rating and the other information that would be required to be disclosed in the form and, consequently, could make the attestation? For example, could the lead analyst, the chair of the rating committee, a senior manager, or some other person make the proposed attestation?*

Response: As noted in our response to question G.4.1, in the European Union and Hong Kong, we name the chair of the rating committee that in fact approved the rating**.**

G.5 *The Commission generally requests comment on all aspects of proposed new paragraph (a)(2) of Rule 17g-7. The Commission also seeks comment on the following:*

G.5.1 *Would it be appropriate to require the inclusion of the certification of the provider of third-party due diligence services with the publication of the credit rating and the form containing information about the credit rating? Is there an alternative means of disclosing the certifications that would be reasonably designed to ensure they are disseminated to users of the NRSRO's credit ratings? If so, describe the method of disclosure.*

Response: Obtaining and disclosing this certification should be the obligation of the issuer. NRSROs do not engage the third-party due diligence firm.

<u>Section H – Third-Party Due Diligence for Asset-Backed Securities</u>

H. *The Commission generally requests comment on all aspects of Section 15E(s)(4)(B) of the Exchange Act. The Commission also seeks comment on the following:*

H.1 *How would a provider of third-party due diligence services identify the NRSROs producing credit ratings to which the due diligence services relate? For example, would it be sufficient for the provider of third-party due diligence services to contractually require issuers and underwriters that employ it to provide these services to identify the NRSROs engaged by the issuer or underwriter to produce credit ratings for the Exchange Act-ABS and to identify any other NRSROs the issuers and underwriters have notice are producing unsolicited credit ratings for the Exchange Act-ABS? Would issuers and underwriters agree to such contractual terms or would they use a provider of third-party due diligence services that does not demand such terms? Even if issuers and underwriters agree to such contractual terms, would they know the identity of every NRSRO producing a credit rating for the Exchange Act-ABS, particularly NRSROs producing unsolicited credit ratings? Would an appropriate mechanism for providing the certifications to all NRSROs producing a credit rating for the Exchange Act-ABS be to disclose it with the information required by paragraph (a)(3) of Rule 17g-5 (which requires, among other things, the issuer or underwriter to make the information provided to an NRSRO hired to produce a credit rating for a structured finance product such as an Exchange Act-ABS available to any other NRSRO)?*

Response: Ratings Services has no comment.

H.2 *In the case where an NRSRO (as opposed to the issuer or underwriter) employs the provider of third-party due diligence services, how would the NRSRO know of any other NRSROs that are producing credit ratings to which the due diligence services relate and provide the identities of such NRSROs to the provider of the third-party due diligence services?*

Response: The NRSRO would not necessarily know of any other NRSROs that are producing credit ratings.

H.2 (continued) *If paragraph (a)(3) of Rule 17g-5 would be an appropriate mechanism for providing the certifications to all NRSROs producing a credit rating for the Exchange Act-ABS,* *could the hired NRSRO obtain a representation from the issuer or underwriter that it would make any certifications received by the NRSRO available to other NRSROs through the process by which the issuer or underwriter makes the information required by paragraph (a)(3) of Rule 17g-5 available to other NRSROs?*

Response: Ratings Services has no comment.

H.3 *Should there be some type of centralized database where NRSROs producing credit ratings for an Exchange Act-ABS identify themselves and which would be deemed constructive notice to any provider of third-party due diligence services that is providing services related to the Exchange Act-ABS?*

Response: As a general matter, we do not believe that NRSROs should be required to bear the burden of populating such a database, and we believe that it would be more appropriate for issuers to identify the NRSROs they retain to provide credit ratings. As noted, NRSROs do not participate in the sales or marketing of securities they rate, nor do they participate in underwriting or issuing processes.

H.3 (continued) *If so, should the Commission administer this centralized database or should the issuers and underwriters, providers of third-party due diligence services, NRSROs, or users of credit ratings administer this database?*

Response: If there were to be a centralized database, we believe it should be administered by an independent party rather than third-party due diligence providers, NRSROs, or users of credit ratings.

H.4 *Should there be a centralized database where a provider of third-party due diligence services submits its certification for publication, and should submitting the certification to such a database be deemed constructive receipt by an NRSRO producing a credit rating for an Exchange Act-ABS to which the due diligence services described in the certification relate?*

Response: Either type of database referenced in H.3 or H.4, could be helpful and could serve as constructive notice, as applicable.

H.4 (continued) *Should this database also be the mechanism by which issuers and underwriters make publicly available, pursuant to the requirement in Section 15E(s)(4)(A) of the Exchange Act, the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter?*

Response: We consider this to be a reasonable approach for public ratings.

H.4 (continued) *If so, should the Commission administer this centralized database or should the issuers and underwriters, providers of third-party due diligence services, NRSROs, or users of credit ratings administer this database? For example, should the certification be furnished or filed on the Commission's EDGAR system?*

Response: As stated in our response to question H.3 above, we believe any centralized database would be best administered by an independent party (e.g., the Commission). EDGAR appears to be a reasonable approach for public ratings.

H.5 *Should there be a reasonableness test in terms of assessing whether the provider of third- party due diligence services submitted the certification to all NRSROs required to receive the certification? For example, should the provider of third-party due diligence services be required to provide the certification to all NRSROs it knows or reasonably should know are producing a credit rating for which its services relate?*

Response: Ratings Services has no comment.

H.6 *How soon after the provider of third-party due diligence services completes its review should the certifications be provided to all NRSROs required to receive it? For example, should the certification be provided "promptly" or within 24 hours, 2 business days, 10 business days, or some other period of time?*

Response: The certification should be provided promptly to all NRSROs required to receive it, and within two business days following completion of the due diligence review appears to be a reasonable timeframe.

H.7 *Should the provider of third-party due diligence services be required to provide the certification to all required NRSROs at the same time so that no single NRSRO has the benefit of using the certification before the other NRSROs that are required to receive it?*

Response: All required NRSROs should be in receipt of the certification at the same time.

H.7 (continued) *How would such a requirement be implemented and enforced in practice?*

Response: Such a requirement might possibly be met by a centralized database, as referenced above.

H.8 *Should the requirement to provide the certification to all NRSROs required to receive it sunset after some period of time after the due diligence services are completed such as 30, 60, 90, 120, 150, 180 days or some longer period? For example, should the provider of third-party due diligence services be required to provide the certification to any NRSRO that produces a credit rating to which its services relate until the security matures, is called, is pre-paid, or goes into default?*

Response: No. The certificate should not be allowed to "sunset." The requirements that the certification be provided to all required NRSROs by the provider of third-party due diligence services should remain for the life of the transaction/rated security. The certification should specify the date it was issued and the period reviewed.

H.9 *If the provider of third-party due diligence services is hired to provide due diligence services with respect to an initial issuance of securities, would it need to provide the certification at some* *later time to an NRSRO that does not rate the securities initially but produces a credit rating after the securities have been outstanding for a period of time?*

Response: Yes. We think that any NRSRO should have access to the report of the third-party due diligence provider, regardless of when the NRSRO is asked to rate the issued securities.

H.9.1 *The Commission generally requests comment on all aspects of proposed new Rule 15Ga2 and the proposed amendments to Form ABS-15G. The Commission also seeks comment on the following:*

H.9.1.1 *Is proposed Rule 15Ga-2 appropriate?*

Response: Ratings Services has no comment.

H.9.1 (continued) *Is the proposed definition of "third-party due diligence report" appropriate? Is there an alternative definition that would be consistent with the requirements of Section 15E(s)(4)?*

Response: We believe the proposed definition is appropriate.

H.9.1.2 *The Commission is proposing to require disclosure regarding the findings and conclusions of third-party due diligence reports for both registered and unregistered transactions. Is there any reason Section 15E(s)(4)(A) of the Exchange Act should not apply to both registered and unregistered Exchange Act-ABS transactions? If the requirement applies to both registered and unregistered transactions, should the universe of Exchange Act-ABS offerings that would be subject to the requirement be defined, as proposed, as an offering of Exchange Act-ABS, as that term is defined in Section 3(a)(77) of the Exchange Act?*

Response: Ratings Services has no comment.

H.9.1.3 *Proposed Rule 15Ga-2 would apply only if the Exchange Act-ABS is to be rated by a NRSRO. Is that appropriate? Why or why not?*

Response: Ratings Services has no comment.

H.9.1.4 *Should the Commission exempt any issuers, underwriters or other parties from this requirement? As proposed, Rule 15Ga-2 would apply to issuers and underwriters of Exchange Act-ABS that are exempted securities as defined in Section 3(a)(12) of the Exchange Act, including government securities and municipal securities. Should issuers or underwriters of such exempted securities be exempt from this provision? Is the proposed accommodation for municipal Exchange Act-ABS appropriate?*

Response: Ratings Services has no comment.

H.9.1.5 *Is the proposal to not require the issuer or underwriter to furnish Form ABS-15G if it obtains the necessary representations from the NRSROs engaged to produce credit ratings for the Exchange Act-ABS appropriate?*

Response: Ratings Services does not believe this to be appropriate. Instead, Ratings Services believes an issuer or its agents should bear the obligation to disclose any information related to the assets being securitized by that issuer. In addition to being the owner and verifier of the assets, the issuer derives the primary benefit of securitizing the assets, and is most likely to have access to accurate and complete information about the assets. Releasing issuers from the obligation to furnish Form ABS-15G could be construed by some as releasing issuers from accountability for the accuracy of the information included in the form, and could give investors a false impression that NRSROs vouch for the accuracy of such information.

H.9.1.5 (continued) *For example, would investors and other users of credit ratings benefit from having issuers and underwriters and NRSROs disclose the findings and conclusions of the provider of third-party due diligence services?*

Response: Under the proposed rules, NRSROs are already required to disclose, together with their credit rating reports, certifications in their possession of any third-party due diligence providers for the rated security (Form ABS-15E). If NRSROs were additionally required to publish Form ABS-15G or content from it, this could lead to confusion for investors with regard to who is providing the information. This could also lead to the undesirable result of discouraging investors from reading offering documents. NRSROs' reports, together with the proposed ratings disclosure form, would already contain significant information that issuers typically disclose in offering documents. Adding to the report the disclosure of a form prepared by issuers could inappropriately encourage investors to use NRSROs' reports as a proxy for offering documents. This would contradict current policy and regulatory goals to avoid any undue reliance on ratings. Additionally, the findings and conclusions of the third-party due diligence provider may include observations that are unrelated to an NRSRO's credit rating determination. It would be misleading to include such observations in NRSROs' disclosure as it would suggest they were relevant to the credit rating determination when in fact they were not.

H.9.1.5 (continued) *In addition, would NRSROs engaged to determine a credit rating for an Exchange Act-ABS agree to make the disclosure?*

Response: No. NRSROs would not agree to make this disclosure. Requiring NRSROs to make the disclosure of Form ABS-15G could, from the viewpoint of ratings users and other market participants, undermine the NRSRO's role as an independent provider of opinions about creditworthiness. In effect, it would put the NRSRO in the position of having to publish, without evaluation, information received from a seller of securities. Such mandatory publication of unevaluated information as part of NRSROs' credit rating reports would run afoul of Section 15E(c)(2) of the Exchange Act, which bars the Commission from regulating the substance of a credit rating. In addition, the production of Form ABS-15G could create the misleading impression that NRSROs vouch for the accuracy of the information it contains.

As previously noted, under the proposed rules, NRSROs are already required to include with their credit rating reports any certification they receive from a provider of third-party due diligence services that relates to the credit rating. Requiring NRSROs to add to this disclosure by furnishing Form ABS-15G could lead to duplication, confusion for investors, and undue reliance on ratings reports. Ratings Services strives to be transparent and independent, and this proposal would contradict this goal.

H.9.1.5 (continued) *Could potential concerns among NRSROs about making the disclosure be addressed by permitting them to rely on the disclosure the provider of third-party due diligence services would need to make about the findings and conclusions of the review in Item 5 of proposed new Form Due Diligence-15E discussed below in Section II.H.3 of this release?*

Response: Relying on Form Due Diligence-15E, prepared by a provider of third-party due diligence services, would not alleviate the concerns described in the previous answers, which arise from the disclosure by an NRSRO of a regulatory form or its content that was prepared by the issuer or its agents. In addition, please see our response to question H.9.2.1 below, in which we note that the due diligence information required to be disclosed by a third-party due diligence provider on Form ABS-15E (or by an issuer on Form ABS-15G) does not address information about the due diligence firm itself, which information Ratings Services currently assesses in the context of relying on due diligence information provided by third parties for RMBS transactions.

H.9.1.5 (continued) *Under proposed Rule 15Ga-2, an issuer or underwriter would not be required to furnish Form ABS-15G if it receives a representation from an NRSRO that can be reasonably relied upon that the NRSRO will publicly disclose the required information five business days prior to the first sale in the offering in an information disclosure form generated pursuant to Rule 17g-7(a)(1). Should the Commission, as proposed, also require an issuer or underwriter to furnish Form ABS-15G if the NRSRO fails to publicly disclose in an information disclosure form the required disclosure five business days prior to the first sale in the offering?*

Response: As stated above, Ratings Services believes that any disclosure of Form ABS-15G should be an obligation of the issuer and underwriter. (We refer to our response to question G.1.4 above). Therefore, Ratings Services would not be in a position to agree to make the representation referred to in proposed Rule 15Ga-2. Moreover, as noted, the proposed rules would require that NRSROs provide any certification received by them from a provider of third-party due diligence services that relates to the credit rating as part of the credit rating report; the additional provision of Form ABS-15G would likely lead to duplication and confusion for investors.

H.9.1.5 (continued) *If so, should the issuer or underwriter be required, as proposed, to furnish Form ABS-15G two business days prior to the first sale in the offering?*

Response: Ratings Services has no comment.

H.9.1.5 (continued) *Should the requirement instead be three days before? Alternatively, should the Commission require that the issuer or underwriter wait another five business days after furnishing Form ABS-15G before the first sale? If not, how long in advance of the first sale should issuers or underwriters be required to furnish Form ABS-15G? Should an issuer or underwriter not be required to furnish Form ABS-15G two business days prior to the first sale in the offering if the NRSRO fails to publicly disclose the required information five business days prior to the first sale, but does publicly disclose the information on the fourth or third business day prior to the first sale since an issuer's or underwriter's furnishing in that case would result in duplicative disclosure?*

Response: The fact that the question contemplates failure by an NRSRO to comply with the five-business day timeframe and effectively provides for a "back-up" disclosure by the issuer or underwriter underscores the fact that securities offerings and timeframes are beyond the control, and often the knowledge, of NRSROs. We otherwise refer to our previous responses that the disclosure of Form ABS-15G should be the sole obligation of the issuer or underwriter of the securities.

H.9.1.5 (continued) *If so, how could an NRSRO be properly incentivized to publicly disclose the required information five business days prior to the first sale in the offering?*

Response: Ratings Services has no comment.

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H.9.1.6 *Does the proposal to require an issuer or underwriter to furnish Form ABS-15G in the event that the NRSRO fails to fulfill its representation offset the effectiveness or benefit of the proposal to permit issuers and underwriters to reasonably rely on a representation from an NRSRO?*

Response: Please see our response to question H.9.1.5.

H.9.1.7 *Under the proposal, the issuer or underwriter would be required to provide to the Commission, upon request, information regarding the manner in which it obtained the representation of the NRSRO engaged to produce credit ratings. Are there any other provisions that should be added to ensure compliance with the proposal not to require the issuer or underwriter to furnish Form ABS-15G if it obtains the necessary representations from the NRSRO?*

Response: Please see our response to question H. 9.1.5.

H.9.1.8 *Are there other appropriate means of making the findings and conclusions of third-party due diligence reports "publicly available" as required by Section 15E(s)(4)(A) of the Exchange Act? Is furnishing information regarding the findings and conclusions of the report of the provider of third-party due diligence services on proposed Form ABS-15G on EDGAR (except with respect to offerings of municipal Exchange Act-ABS) an appropriate way for issuers in unregistered offerings and for underwriters in registered and unregistered offerings to make this information publicly available? Should the Form ABS-15G be required to be filed instead?*

Response: We think that having issuers make the findings and conclusions of third-party due diligence reports on proposed Form ABS-15G available on EDGAR would be an appropriate way to make such reports "publicly available," except in connection with private or confidential transactions.

H.9.1.9 *Would the proposed requirement that Form ABS-15G be furnished five business days prior to first sale provide investors with sufficient time to review the findings and conclusions contained therein?*

Response: Ratings Services has no comment.

H.9.1.9 (continued) *Would it provide NRSROs with sufficient time to take the included information into account in determining a rating? If not, what would be a more appropriate deadline and why? Are five business days also appropriate in unregistered offerings? Is there reason to require a different number of days in unregistered offerings?*

Response: The proposed five business day time frame prior to a first sale would not be a sufficient time spread for Ratings Services' review of most ABS issuances. The time generally needed for our review ranges from five days on simple repeat offerings to 20 days or more on large complex transactions.

H.9.1.10 *Is the proposed signature requirement for Form ABS-15G appropriate? Is it necessary? Conversely, are there other appropriate individuals that are better suited to sign the form?*

Response: Ratings Services has no comment.

H.9.1.11 *Should issuers of registered Exchange Act-ABS offerings be required to furnish the information required by proposed Rule 15Ga-2 on Form ABS-15G and not be required to provide the information in a prospectus that is filed with the Commission, as proposed? Why or why not?*

Response: Ratings Services has no comment.

H.9.2 *The Commission generally requests comment on all aspects of proposed new Rule 17g-10 The Commission also seeks comment on the following:*

H.9.2.1 *The Commission understands that "provider of third-party due diligence services" is a phrase used as a term of art in the securitization market, and the proposed rules are intended to apply to those entities that are commonly identified by that term. Would the proposed definition of "due diligence services" provide sufficient guidance to those entities providing due diligence services as to when the requirements of the self- executing provision in Section 15E(s)(4)(B) and proposed new Rule 17g-10 would apply? How could the proposal be modified to provide clearer guidance?*

Response: The proposed definition does provide sufficient guidance as to when the rule would apply.

However, there is no reference in the proposed rule to an assessment of the quality of the services provided by providers of due diligence services and, therefore, the proposed rule appears to treat all providers equally, regardless of experience and the quality of their work. Ratings Services uses for its credit analyses information it believes to be reliable. For instance, Ratings Services periodically publishes a list of third-party due diligence providers pursuant to criteria for RMBS transactions. Therefore, the proposed rule could in theory lead to NRSROs being required to include in their rating disclosure form information that they believe is not from a reliable source and that they did not use in their rating analysis.

H.9.2.2 *Should, as proposed, the definition of "due diligence services" apply to Exchange Act- ABS only or should it apply more broadly to structured finance products?*

Response: We believe this definition should apply to Exchange Act-ABS only. There is no established definition for structured finance products per se, which might produce considerable uncertainty as to the proper scope of Rule 17g-10. Use of the Exchange Act definition, although not necessarily dispositive in every instance, will provide a more definitive standard.

9.2.2.(continued) *If it should apply more broadly, what types of structured finance products that are not Exchange Act- ABS should the definition include within its scope?*

Response: Ratings Services has no comment.

9.2.2 (continued) *In addition, are providers of third- party due diligence services used with respect to these types of structured finance products? If so, explain how the results of those services are relevant to the determination of a credit rating?*

Response: Ratings Services currently uses third-party due diligence reports in its analysis of RMBS and CMBS transactions**.**

H.9.2.3 *Does the first category of "due diligence service" identified in proposed paragraph (c)(1)(i) of new Rule 17g-10 (i.e., a review of the assets underlying an Exchange Act- ABS for the purpose of making findings with respect to the quality or integrity of the information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets) appropriately describe a form of due diligence service for Exchange Act-ABS that is provided to issuers or underwriters by a provider of third-party due diligence services? For example, is this component of the definition too broad or narrow? If so, how should this component of the definition be refined? Alternatively, should it be omitted from the definition as reflecting activity that is not a third-party due diligence service?*

Response: The first category correctly describes a service provided by a due diligence review.

H.9.2.4 *Does the second category of "due diligence service" identified in proposed paragraph (c)(1)(ii) of new Rule 17g-10 (i.e., a review of the assets underlying Exchange Act-ABS for the purpose of making findings with respect to whether the origination of the assets conformed to underwriting or credit extension guidelines, standards, criteria or other requirements) appropriately describe a form of due diligence service for Exchange Act- ABS that is provided to issuers or underwriters by a provider of third-party due diligence services? For example, is this component of the definition too broad or narrow? If so, how should this component of the definition be refined? Alternatively, should it be omitted from the definition as reflecting activity that is not a third-party due diligence service?*

Response: The second category correctly describes a service provided by a due diligence review.

H.9.2.5 *Does the third category of "due diligence service" identified in paragraph (c)(1)(iii) of new Rule 17g-10 (i.e., a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to the value of collateral securing such assets) appropriately describe a form of due diligence service for Exchange Act-ABS that is provided to issuers or underwriters by a* *provider of third-party due diligence services? For example, is this component of the definition too broad or narrow? If so, how should this component of the definition be refined? Alternatively, should it be omitted from the definition as reflecting activity that is not a third-party due diligence service?*

Response: The third category correctly describes a service provided by a due diligence review.

H.9.2.6 *Does the fourth category of "due diligence service" identified in paragraph (c)(1)(iv) of new Rule 17g-10 (i.e., a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to whether the originator of the assets complied with federal, state or local laws or regulations) appropriately describe a form of due diligence service for Exchange Act-ABS that is provided to issuers or underwriters by a provider of third-party due diligence services? For example, is this component of the definition too broad or narrow? If so, how should this component of the definition be refined? Alternatively, should it be omitted from the definition as reflecting activity that is not a third-party due diligence service?*

Response: The fourth category correctly describes a service provided by a due diligence review.

H.9.2.7 *Would the catchall component of the definition of "due diligence services" identified in proposed paragraph (c)(1)(v) of new Rule 17g-10 (i.e., a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to any other factor or characteristic of such assets that would be material to the likelihood that the Exchange Act-ABS will pay interest and principal according to its terms and conditions) adequately capture existing or future third-party due diligence services not identified in proposed paragraphs (c)(1)(i) through (iv) of new Rule 17g-10? For example, is this component of the definition too broad or narrow? If so, how should this component of the definition be refined? Alternatively, should it be omitted from the definition?*

Response: We believe it is unlikely that any third-party due diligence provider would address this category, and that it should be removed. The due diligence provider may lack knowledge of the transaction and its structure sufficient to form an informed opinion on this question. In addition, if third-party providers are required to provide an opinion on the likelihood of default on securities, we would suggest that they be treated as credit rating agencies.

H.9.2.8 *Are there other types of due diligence services for Exchange Act-ABS provided to issuers or underwriters by a provider of third-party due diligence services that are not identified in the Commission's proposed definition that should be included? For example, would the proposed definitions capture third-party due diligence services provided with respect to an Exchange Act-ABS after it has been issued? If proposed definitions would not capture due diligence services provided post-issuance or any other services commonly understood as third party due services, describe such services and provide suggested rule text for how they could be incorporated into the definition. Also, provide an explanation as to how such services would be relevant to the determination of a credit rating?*

Response: Ratings Services is not aware of any such additional services at this time.

H.9.2.9 *Would the inclusion of the proposed definition of "issuer" in new Rule 17g-10 identify the types of entities that should trigger the requirements of the proposed rule? For example, is the proposed definition too broad or narrow? If so, how should the proposed definition be refined?*

Response: Ratings Services has no comment.

H.9.2.10 *Would the inclusion of the proposed definition of "originator" in new Rule 17g-10 identify the types of entities that should trigger the requirements of the proposed rule? For example, is the proposed definition too broad or narrow? If so, how should the proposed the definition be refined?*

Response: Ratings Services has no comment.

H.9.2.11 *Would the inclusion of the proposed definition of "securitizer" in new Rule 17g-10 identify the types of entities that should trigger the requirements of the proposed rule? For example, is the proposed definition too broad or narrow? If so, how should the proposed the definition be refined?*

Response: Ratings Services has no comment.

H.9.3 *The Commission generally requests comment on all aspects of proposed new Form ABS Due Diligence-15E. The Commission also seeks comment on the following:*

H.9.3.1 *Would the proposed format of proposed Form ABS Due Diligence-15E appropriately achieve the objectives of Section 15E(s)(4)(C) of the Exchange Act? How could the format be modified to better achieve these objectives?*

Response: Ratings Services has no comment.

H.9.3.2 *Should proposed Form ABS Due Diligence-15E be more prescriptive in terms of the steps a provider of third-party due diligence services would need to take in performing the review? For example, should the form specify the minimum sample size a provider of third-party due diligence services must perform on the assets underlying the Exchange Act-ABS? If so, should the sample size be the same across all asset classes and within asset classes? For example, with respect to RMBS, the scope of due diligence could be based on the type of mortgage loans (prime, Alt-A, or sub-prime), the quality of the originator of the loans, the level of documentation provided with the loans or other characteristics. Moreover, the scope of due diligence required for a CMBS could involve reviewing every pool asset (rather than a sample), since the number of underlying loans is much less than in an RMBS and, therefore, the default of one loan would have a greater impact than the default of a loan underlying an RMBS. Moreover, the scope of due diligence required by an NRSRO for an Exchange Act-ABS where the asset pool composition turns over rapidly because it contains revolving assets, such as credit card receivables or dealer floor-plan receivables, could involve different sampling techniques. How would the Commission account for these variables in prescribing minimum sample sizes or other procedures that would need to be undertaken by a provider of third-party due diligence services? What benefits and costs could result from being more prescriptive? Are there practical issues to imposing a more prescriptive approach? If so, describe these issues.*

Response: Imposing minimum requirements could be an issue depending on deal size. In addition, NRSROs may review portfolios differently depending on whether they are composed of aged loans or new loans, for instance. Different transactions might highlight areas of concern that the due diligence service provider would be expected to focus on and review in greater detail. Being overly prescriptive could limit the usefulness of the due diligence services and report. We believe that in order to be useful the requirements for the proposed form should follow a more general approach.

H.9.3.3 *Would the information disclosed in Item 3 of proposed new Form ABS Due Diligence15E identifying each NRSRO whose published criteria were satisfied by the provider of third-party due diligence services be useful to the NRSRO producing a credit rating for the Exchange Act-ABS? If not, how could the proposed instructions for Item 3 be modified to make it more useful to NRSROs? Are there practical issues to imposing a more prescriptive approach? If so, describe these issues.*

Response: Ratings Services, and likely other NRSROs as well, would continue to make its own assessment of whether its criteria are satisfied in any given transaction. Therefore, we do not believe that adding this information is useful to NRSROs.

H.9.3.4 *Would the summary provided in proposed Item 4 of new Form ABS Due Diligence-15E about the scope and manner of the due diligence services provided in connection with the review of assets be useful to investors, other users of credit ratings, and NRSROs producing a credit rating for the asset-backed security? If not, how could the proposed instructions for Item 4 be modified to make it more useful? Are there practical issues to imposing a more prescriptive approach? If so, describe these issues.*

Response: We believe the proposed summary would be useful to all.

H.9.3.5 *Would the summary provided in proposed Item 5 of new Form ABS Due Diligence-15E about the findings and conclusions that resulted from the due diligence services be useful to investors, other users of credit ratings, and NRSROs producing a credit rating for the asset-backed security? If not, how could the proposed instructions for Item 5 be modified to make it more useful? Are there practical issues to imposing a more prescriptive approach? If so, describe these issues.*

Response: We believe the proposed summary would be useful to all.

Section I – Standards of Training, Experience and Competence

I.1.a *The Commission generally requests comment on all aspects of proposed paragraph (a) of new Rule 17g-9. The Commission also seeks comment on the following:*

I.1.a.1 *Would the approach in paragraph (a) of new Rule 17g-9 (i.e., identifying an objective for the standards and requiring the NRSRO to design its own standards to achieve that objective) appropriately implement Section 936 of the Dodd-Frank Act, particularly when taken together with the provisions of proposed paragraphs (b) and (c) of new Rule 17g-9 discussed below? If not, should the Commission specifically prescribe the requirements of the standards to establish consistent industry-wide standards? If so, would it be practical to prescribe consistent industry-*

wide standards applicable to each NRSRO? Commenters who believe such an approach would be feasible and appropriate should identify such a standard and provide suggested rule text.

Response: Ratings Services believes it is generally appropriate for the Commission to identify a feasible objective to implement Section 936 of the Dodd-Frank Act and agrees that each NRSRO should design its own standards to meet that objective. In connection with this proposed rule, we urge the Commission to be cognizant that, as forward-looking statements of opinion, ratings should not be categorized as "accurate" or "inaccurate." It is expected, for example, that some percentage of rated issuers and securities (even those with the highest ratings) will default. We believe that rather than considering the "accuracy" of ratings, the Commission should instead focus on whether the ratings have been derived in a manner consistent with the NRSRO's policies and procedures. We also note that this proposed rule assumes that "individuals" produce credit ratings when, in fact, Ratings Services and a number of other NRSROs determine credit ratings by committee and no one individual is responsible for any credit rating.

I.1.a.2 *Would the objective identified in proposed paragraph (a) of new Rule 17g-9 (i.e., standards of training, experience, and competence that are reasonably designed to achieve the objective that such credit analysts produce accurate credit ratings) be appropriate? Would it establish an objective that could be achieved? Would it implement the goal of Section 936 of the Dodd-Frank Act? Commenters who believe that the proposed objective is not appropriate should explain why and provide suggested rule text to modify the objective.*

Response: Ratings Services believes the objective set forth in paragraph (a) of new Rule 17g-9 is appropriate, subject to our comments in response to question I.1.a.2 that: (i) credit ratings are forward-looking statements of opinion and, as such, cannot properly be characterized as "accurate" or "inaccurate"; and (ii) ratings are formed by committees, not any individual analyst.

I.1.a.3 *Is the objective – the production of "accurate credit ratings" – assessable? For example, how should the accuracy of credit ratings be measured?*

Response: No. Please see our response to question I.1.a.2.

I.1.a.4 *Would it be feasible to establish a testing program that has standardized components to review the adequacy of the standards of training, experience, and competence that an NRSRO maintains, enforces, and documents pursuant to proposed paragraph (a) of new Rule 17g-9? If so, what should the components of that testing program be? What would be the advantages and disadvantages of such a program? Are there comparable testing programs used in other contexts that would be relevant in developing such a program?*

Response: No. Ratings Services believes it would not be feasible to establish a testing program that has standardized components to review the adequacy of the standards of training, experience and competence established by the NRSRO. If the final rule requires NRSROs to maintain, enforce and document their training, experience and competency standards, Ratings Services supports a requirement that NRSROs publish general information about these standards, which would then allow market participants, through their use, or non-use, of a particular NRSRO's ratings, to express their views of the adequacy of the standards.

I.1.b *The Commission generally requests comment on all aspects of proposed paragraph (b) of new Rule 17g-9. The Commission also seeks comment on the following:*

I.1.b.1 *Are there any other factors in addition to, or as an alternative to, the four factors identified in paragraphs (b)(1) through (4) an NRSRO should consider when establishing standards of training, experience, and competence? For example, should the proposed rule require an NRSRO to consider the number of initial credit ratings the individual is expected to participate in determining annually and the number of credit ratings the individual is expected to participate in monitoring annually? If so, how should these factors be taken into consideration? Identify any additional or alternative factors and provide suggested rule text.*

Response: Ratings Services believes that the factors identified in paragraphs (b)(1) through (4) are reasonable for NRSROs to consider when establishing standards of training, experience, and competence for their analysts. However, we believe the Commission should not require NRSROs to consider specified factors. As the Commission suggests in the Release, each NRSRO should have flexibility to customize the standards according to its own procedures and methodologies for determining credit ratings.

With respect to the example posed by the Commission in this paragraph, we do not believe that the proposed rule should require that, in establishing such standards, the NRSRO must consider the number of initial credit ratings the individual is expected to participate in determining annually and the number of credit ratings the individual is expected to participate in monitoring annually. At Ratings Services, the number of credits that constitute an analyst's workload at any particular time is determined by not only the individual's analytical skills but numerous other factors including the characteristics of each credit, the analyst's contribution to other analytic practice activities (e.g., staff development and training activities), and the analyst's ability to manage multiple tasks. These are subjective factors that NRSROs, like other organizations, rely on managers to evaluate with respect to their staff.

I.1.b.2 *Should the factor identified in proposed paragraph (b)(1) of Rule 17g-9 (i.e., if the credit rating procedures and methodologies used by the individual involve qualitative analysis, the knowledge necessary to effectively evaluate and process the data relevant to the creditworthiness of the obligor being rated or the issuer of the securities or money market instruments being rated) be considered when the NRSRO designs its standards of training, experience, and competence for the individuals it employs to determine credit ratings? If not, should proposed paragraph (b)(1) be modified to provide better guidance for designing the standards? If so, how should it be modified? Alternatively, should it be omitted from the rule? If so, explain why.*

Response: Ratings Services believes that each NRSRO should design standards of training, experience and competence appropriate to its individual circumstances. As a general matter, Ratings Services believes that, in designing such standards, an NRSRO could reasonably choose to consider the knowledge necessary to effectively evaluate and process the data relevant to the creditworthiness of the obligor being rated or the issuer of the securities or money market instruments being rated.

I.1.b.3 *Should the factor identified in proposed paragraph (b)(2) of Rule 17g-9 (i.e., if the credit rating procedures and methodologies used by the individual involve quantitative analysis, the* *technical expertise necessary to understand any models and model inputs that are a part of the procedures and methodologies) be considered when the NRSRO designs its standards of training, experience, and competence for the individuals it employs to determine credit ratings? If not, should proposed paragraph (b)(2) be modified to provide better guidance for designing the standards? If so, how should it be modified? Alternatively, should it be omitted from the rule? If so, explain why.*

Response: Ratings Services agrees that in designing its standards of training, experience and competence for the individuals it employs to determine credit ratings, an NRSRO should consider the technical knowledge necessary to understand any models and model inputs that are a part of its procedures and methodologies.

I.1.b.4 *Should the factor identified in proposed paragraph (b)(3) of Rule 17g-9 (i.e., the classes and subclasses of credit ratings for which the individual participates in determining credit ratings and the factors relevant to such classes and subclasses, including the geographic location, sector, industry, regulatory and legal framework, and underlying assets, applicable to the obligors or issuers in the classes and subclasses) be considered when the NRSRO designs its standards of training, experience, and competence for the individuals it employs to determine credit ratings? If not, should proposed paragraph (b)(3) be modified to provide better guidance for designing the standards? If so, how should it be modified? Alternatively, should it be omitted from the rule? If so, explain why.*

Response: Ratings Services believes that each NRSRO should design standards of training, experience and competence appropriate to its individual circumstances. As a general matter, Ratings Services believes that, in designing such standards, an NRSRO could reasonably choose to consider the factors relevant to the classes and subclasses of credit ratings for which the individual participates including, if relevant in each specific case, the geographic location, sector, industry, regulatory and legal framework, and underlying assets, applicable to the obligors or issuers in the classes and subclasses.

I.1.b.5 *Should the factor identified in proposed paragraph (b)(4) of Rule 17g-9 (i.e., the complexity of the obligors, securities, or money market instruments being rated by the individuals) be considered when the NRSRO designs its standards of training, experience, and competence for the individuals it employs to determine credit ratings? If not, should proposed paragraph (b)(4) be modified to provide better guidance for designing the standards? If so, how should it be modified? Alternatively, should it be omitted from the rule? If so, explain why.*

Response: Ratings Services believes that each NRSRO should design standards of training, experience and competence appropriate to its individual circumstances. As a general matter, Ratings Services believes that, in designing such standards, an NRSRO could reasonably choose to consider the complexity of the obligors, securities, or money market instruments being rated by the individuals.

I.1.c *The Commission generally requests comment on all aspects of proposed paragraph (c) of new Rule 17g-9. The Commission also seeks comment on the following:*

I.1.c.1 *Would proposed paragraph (c)(1) of new Rule 17g-9 (which would provide that the standards of training, experience, and competence must include a requirement for periodic testing* *of the individuals employed by the NRSRO to determine credit ratings on their knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings in the classes and subclasses of credit ratings for which the individual is responsible for determining credit ratings) appropriately implement Section 936(2) of the Dodd-Frank Act? If not, how should proposed paragraph (c)(1) be modified to better achieve the objective of Section 936(2)?*

Response: Ratings Services strongly supports the ongoing education and development of analysts involved in producing and monitoring credit ratings. We have a mandatory annual minimum of 25 credit hours of continuing analytical education. Through a designated intranet portal and learning management system software, The Learning Center, Ratings Services offers and monitors completion of instructor-led training activities, online training activities, webex and teleconference training activities. The Learning Center is a global platform to deliver and track analytical training activities.

We also have the global Standard & Poor's Credit Analyst Certification Program which was developed in collaboration with the New York University Stern School of Business. The certification program consists of two distinct levels, Level I and Level II. Level I is comprised of three modules: Capital Markets, Corporate & Government Ratings and Structured Finance Ratings. All analysts are required to achieve an overall passing score for the three modules as well as a passing score for their respective analytical practice - Corporate & Government Ratings or Structured Finance Ratings. Level II is specific to the individual's analytical discipline and includes 12 distinct exams: Corporate Ratings, Financial Institutions, Insurance Ratings, U.S. Public Finance Ratings, Funds Ratings, Sovereign/International Regional and Local Government Ratings, U.S. ABS/RMBS Ratings, Europe Middle East & Africa ABS/RMBS Ratings, Japan ABS/RMBS Ratings, Asia ABS/RMBS Ratings, Global CMBS Ratings, and Global Structured Credit Ratings. All analysts, as well as analytical managers and employees in the Quality and Criteria groups, are required to achieve a passing score in their respective analytical discipline. Further, Ratings Services' Credit Analyst Certification Program Policy Guidelines require that all part and full-time analytical staff in a credit analysis role and who perform, or are expected to perform, as a primary analyst or who vote, or are expected to vote, in a rating committee pass both Level I and Level II certification exams. In addition, Ratings Services has instituted a rigorous performance management program to ensure our analysts have the knowledge, training, competence and experience to assess credit risk. Each analyst has specific annual performance goals relating to analytical quality and application of S&P policy and processes. We believe our mandatory annual credit hour continuing analytical education requirement and certification program in combination with our rigorous performance management program delivers high standards for analysis and resulting credit opinions without the additional requirement of periodic testing.

I.1.c.2 *Should the Commission prescribe the frequency of the periodic testing that would be mandated under proposed paragraph (c)(1) of new Rule 17g-9? For example, should an NRSRO be required to administer testing every six months, every year, every two years?*

Response: Ratings Services believes that the Commission should not prescribe periodic testing requirements for analysts. As indicated in our response above to question I.1.c.1, Ratings Services believes that the Commission should require that each NRSRO establish its own standards for training, experience and competence. Ratings Services believes that its mandatory annual credit hour continuing analytical education requirement, combined with the Standard & Poor's Credit Analyst Certification Program and a rigorous performance management program provide the necessary training and testing requirements for its analysts.

I.1.c.3 *Would proposed paragraph (c)(2) of new Rule 17g-9 (which would provide that the standards of training, experience, and competence must include a requirement that at least one individual with three years or more experience in performing credit analysis participates in the determination of a credit rating) be an appropriate measure in terms of implementing Section 936 of the Dodd-Frank Act? If not, how should proposed paragraph (c)(2) be modified to better achieve the objective of Section 936? For example, should the Commission establish a different minimum number of years such as 1 or 2 years experience or 4, 5, 6, 7, or some larger number of years? Alternatively, should this proposal be omitted from the rule? If so, explain why?*

Response: Ratings Services' policy is to determine credit ratings by committee, either directly or, in certain circumstances, through derivation either in whole or in part from other credit ratings that are determined by a rating committee. The committee chair has specific responsibilities to ensure the committee is properly constituted, applies Ratings Services' criteria, reviews all relevant information and materials, complies with the Ratings Services Code of Conduct, related policies, guidelines and procedures and reaches a rating decision absent extraordinary circumstances. While Ratings Services views years of experience as an important factor in determining credit opinions, we believe that the Commission should not establish a minimum number of years experience for participating in the determination of a rating. NRSROs should establish their own requirements.

<u>Section J--Universal Rating Symbols across classes — Rule 17g-8(b)</u>

J1.1 *Is proposed paragraph (b)(1) of new Rule 17g-8 sufficiently explicit in terms of the objective that the policies and procedures be reasonably designed to assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument)? If not, what additional detail should the Commission provide in terms of the clarifying the objective?*

Response: We believe that, as currently written, proposed paragraph (b)(1) of new Rule 17g-8 is sufficiently explicit. The current proposed language closely tracks the applicable provision in Section 932(a)(8) of the Dodd-Frank Act and is not ambiguous. As we discuss in Section II.E above, our ratings provide opinions about relative creditworthiness of an issuer, from strongest to weakest, within a universe of credit risk. We do not interpret this proposed rule to require credit ratings to be absolute or exact measures of default probability.

Ratings Services does not support the addition of further detail regarding the objectives of this proposed rule. Among other things, we are concerned that any attempt to further dictate the factors that a credit rating may or may not address would exceed the scope of Section 932(a)(8). Additional restrictions and requirements in this area would also have the potential to create the impression that credit ratings may not address other factors that an NRSRO may deem relevant in its own analytical judgment or that investors may find meaningful. Such factors might include, for example, payment priority, projected recovery and credit stability. Further amendments to this proposed rule would also have the potential to interfere with the analytical independence of

NRSROs in violation Section 15E(c)(2) of the Exchange Act, which provides that the Commission's rules and regulations "shall be narrowly tailored to meet the requirements of this title" and that the Commission may not "regulate the substance of credit ratings or the procedures and methodologies by which any [NRSRO] determines credit ratings."

J.1.2 *Is proposed paragraph (b)(2) of new Rule 17g-8 sufficiently explicit in terms of the objective that the policies and procedures be reasonably designed to clearly define the meaning of each symbol, number, or score used by the NRSRO to denote a credit rating category and notches within a category in the rating scale for each class and subclass of credit ratings for which the NRSRO is registered and to include such definitions in Exhibit 1 to Form NRSRO? If not, what additional detail should the Commission provide in terms of the clarifying the objectives?*

Response: We believe that, as currently written, proposed paragraph (b)(2) of new Rule 17g-8 is sufficiently explicit. Ratings Services does not support the addition of further detail regarding the objectives of this proposed rule. The current proposed language closely tracks the applicable provision in Section 932(a)(8) of the Dodd-Frank Act and is not ambiguous. Furthermore, for reasons similar to those set forth in response to question J.1. 1. above, we are concerned that any attempt to further prescribe how an NRSRO may define its ratings symbols could well exceed the scope of Section 932(a)(8) and/or violate Section 15E(c)(2) of the Exchange Act.

J.1.3 *Is proposed paragraph (b)(3) of new Rule 17g-8 sufficiently explicit in terms of the objective that the policies and procedures be reasonably designed to apply any symbol, number, or score defined in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used? If not, what additional detail should the Commission provide in terms of the clarifying the objective?*

Response: We believe that, as currently written, proposed paragraph (b)(3) of new Rule 17g-8 is sufficiently explicit. Ratings Services does not support the addition of further detail regarding the objectives of this proposed rule. The current proposed language closely tracks the applicable provision in Section 932(a)(8) of the Dodd-Frank Act and is not ambiguous. Furthermore, for reasons similar to those set forth above in response to questions J.1.1 and J.1.2, we are concerned that any attempt to refine this proposed rule could well exceed the scope of Section 932(a)(8) and/or violate Section 15E(c)(2) of the Exchange Act. Finally, because credit ratings reflect forward-looking opinions, we would be concerned about any attempt to judge an NRSRO's adherence to this proposed rule based on an analysis of its ratings performance over any defined period of time. Rather, in our view, an NRSRO's compliance with this rule should be measured by whether the NRSRO has policies and procedures in place to promote comparability of ratings across the asset classes it rates and has adhered to such policies and procedures.

Section K—Annual Report of Designated Compliance Officer

K. *The Commission generally requests comment on all aspects of proposed new paragraph (a)(8) of Rule 17g-3. The Commission also seeks comment on the following:*

K.1 *Should an NRSRO be required to attach to the annual report a signed statement by a duly authorized person (e.g., the designated compliance officer) stating explicitly that the person has responsibility for the reports and, to the best knowledge of the person, the reports fairly present, in* *all material respects, the information contained in the reports? For example, because the designated compliance officer is providing the report to the NRSRO and the NRSRO, in turn, is submitting the report to the Commission, would it be appropriate for the Commission to require an additional certification addressing the submission of the report from the NRSRO to the Commission?*

Response: Ratings Services does not believe it would serve any useful purpose to require that, in addition to the certification the designated compliance officer is already required to provide the NRSRO, the submission of the annual report be accompanied by a separate certification to the Commission. Most likely this additional certification would be made by the same compliance officer who has already certified as to the report's accuracy. Even if the certification were to be made by a different person, we do not believe the substance of that certification would differ from that made by the designated compliance officer. The additional certification will not confer authority over the NRSRO that the Commission does not already have and would be unnecessarily duplicative.

<u>Section L—Electronic Submission of Form NRSRO and the Rule 17g-3 Annual Reports</u>

L. *The Commission generally requests comment on all aspects of these proposals to require the electronic submission of Form NRSRO under paragraphs (e), (f), and (g) of Rule 17g-1 and the annual reports under Rule 17g-3. The Commission also seeks comment on the following:*

L.1 *Should applicants be required to submit Form NRSRO electronically under paragraph (a), (b), (c), or (d) of Rule 17g-1?*

Response: It is Ratings Services' opinion that to achieve consistency and a standard approach, new applicants should follow the identical processes that existing NRSROs have followed.

L.2 *What would be the impact of making the Form NRSROs required under paragraphs (e), (f), and (g) of Rule 17g-1 and the annual reports required under Rule 17g-3 mandatory electronic submissions? Are there additional burdens or costs that would result from requiring these submissions to be made electronically?*

Response: Ratings Services has no objection to providing Rule 17g-1 and the annual report in the PDF electronic format. If the submission is required in another format (*e.g.*, XBRL or XML) then a detailed technical analysis would need to be performed to determine the impact and any associated costs, including detailed evaluation of the specifications, development, unit testing, security and quality assurance.

L.3 *Are there any other difficulties and considerations unique to these proposed requirements? If so, what aspect of the proposed requirements would be burdensome? 721 See proposed new paragraph (a)(1)(xiv) to Rule 101 of Regulation S-T. Are there other alternatives that would be less burdensome? Provide specific details and alternative approaches.*

Response: Ratings Services believes that submitting the annual application in a PDF format would be the most preferred and simplest way to provide the required information.

L.4 *Should NRSROs be required to submit the financial information in Form NRSRO and the information and documents contained in Exhibits 1 through 9 and the Rule 17g-3 annual reports using the XBRL format? Should NRSROs be required to use extensible Markup Language (XML) for EDGAR for non-financial information? Provide detailed information on any difficulties and considerations as well as benefits concerning such requirements.*

Response: As Form NRSRO is primarily a registration document, Ratings Services believes that submission in an XBRL or XML format would not provide additional analytical benefit. Unlike the rating history information which is required to be provided in XBRL format to facilitate manipulation of the large volumes of statistical data in the history files, Form NRSRO is an essentially expository document for which the XBRL format is not well suited. For example, Ratings Services' current Form NRSRO, including exhibits, is nearly 800 pages long, and comprised primarily of textual material. Further, we note that the registration documents for registered investment advisers and broker-dealers, Forms ADV and BD, respectively, are not required to be filed in XBRL or XML format.

Providing the Form in an XBRL or XML format could also make it more difficult and complex for users to access Form NRSRO in contrast to the present situation, where Form NRSRO is commonly available on NRSRO websites in PDF format. If the submission is nevertheless required in an XBRL or XML format then Ratings Services suggests that the Commission provide detailed documentation defining the proposed structure/content of the information to be delivered via XBRL or XML documents and allow for adequate lead time for NRSROs to develop and test the necessary systems revisions.

L.5 *Should the temporary hardship exemption be available for submission of these filings?*

Response: Ratings Services believes that, if all registered NRSROs must file electronically, they should do so in the expected time period unless they are unable to do so due to unforeseen issues. Accordingly, some method of securing a temporary hardship exemption should be available. Although Ratings Services acknowledges that Rule 13(b) under Regulation S-T does provide a means for obtaining such relief, Ratings Services believes that NRSROs should also be able to avail themselves of the temporary hardship exemption under Rule 201. The Commission has not articulated any reason why it is appropriate to add Form NRSRO to the list of submissions for which the Rule 201 temporary hardship exemption is unavailable. Other regulated businesses that must register with the Commission, such as broker-dealers and investment advisers, are not precluded from relying on the Rule 201 temporary hardship exemption with respect to filing Form BD or Form ADV. The Commission has not advanced any reason why NRSROs should be treated differently. Accordingly, we believe the temporary hardship exemption under Regulation S-T Rule 201 should be available for filings of Form NRSRO where unforeseen issues prevent a timely electronic filing.

Section M—Other Amendments

M.1 *The Commission generally requests comment on all aspects of these proposals to replace the word "furnish" with the word "file" in the Commission's NRSRO rules.*

Response: Ratings Services has no comment.

M.2 *The Commission generally requests comment on all aspects of this proposal to amend the definition of NRSRO in Instruction F.4 to Form NRSRO.*

Response: Ratings Services believes the definition of NRSRO in the instructions to Form NRSRO should be consistent with the definition in Section 3(a)(62) of the Exchange Act, as amended by the Dodd-Frank Act.

M.3 *The Commission generally requests comment on all aspects of these proposals to delete the term "or mortgage-backed" from the identification of structured finance products in the NRSRO rules. The Commission also seeks comment on the following:*

M.3.1 *Would the proposal to delete the term "or mortgage-backed" from the identification of structured finance products in the NRSRO rules change the requirements of these rules in any ways? For example, would it exclude certain types of structured finance products that currently are within the scope of these rules by narrowing the definition? Alternatively, would it add certain types of structured finance products that currently are outside the scope of these rules by broadening the definition?*

Response: No. We do not believe that deleting the term "or mortgage backed", as proposed, would change the requirements of the affected rules.

M.4.a *The Commission generally requests comment on all aspects of this proposal to amend Form NRSRO Items 6.A and 7.A and Instruction H to Form NRSRO as it relates to Items 6.A and 7.A. The Commission also seeks comment on the following:*

M.4.a.1 *Would the proposed amendments to Items 6.A and 7.A and Instruction H to Form NRSRO as it relates to Items 6.A and 7.A make the Commission's expectations sufficiently clear in terms of providing the approximate number of credit ratings outstanding in each class for which an applicant is seeking registration and an NRSRO is registered? If not, how could the proposed amendments be modified to provide greater clarity?*

Response: Ratings Services supports efforts to eliminate ambiguities and improve clarity in the instructions to Form NRSRO, subject to comments that follow in this section regarding the classification of instruments that may be seen as having features of more than one class of credit rating.

M.4.a.2 *How should tax-exempt housing bonds be classified for the purposes of Items 6 and 7? For example, should they be classified as: (1) issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.*

Response: Tax-exempt housing bonds should be classified as bonds issued by issuers of municipal securities for the purposes of Items 6 and 7.

In our view, tax-exempt housing bonds differ from asset-backed securities in at least the following two ways. First, tax-exempt housing bonds generally do not satisfy a condition of Regulation AB, referenced in Section 3(a)(62)(A)(iv) of the Exchange Act, as identified above, that requires that, for securities to be considered asset-backed securities, "[t]he activities of the issuing entity … are limited to passively owning or holding the pool of assets, issuing the asset-backed securities supported or serviced by those assets, and other activities reasonably incidental thereto". Rather, the largest issuers of tax-exempt housing bonds are state housing finance agencies ("HFAs"). HFAs are established under state law to foster the creation and maintenance of affordable housing in their jurisdictions. As such, they are mandated to oversee their debt programs and incentivized to do so in a manner that preserves their credit quality. As a result, for tax-exempt housing bonds, the evaluation of management is a crucial component to the evaluation of credit quality, and Ratings Services' criteria for rating such bonds reflects our evaluation of the applicable HFA management. In this critical respect, tax-exempt housing bonds are similar to most areas of municipal finance that consider important the evaluation of management as a key component to credit quality. Moreover, tax-exempt housing issuers not only provide managerial expertise, but may also provide financial resources. This can take the form of general obligation pledges (used by HFAs), cash deposits to support the bonds or other forms of financial support evidenced in this sector.

Second, similar to the above, tax-exempt housing bonds typically do not satisfy another condition of Regulation AB that requires that, for securities to be considered asset-backed securities, "[n]o non-performing assets are part of the asset pool as of the measurement date". Typically, the assets backing tax-exempt housing bonds include some non-performing assets, as such term is defined in Regulation AB.

Based on the above and the longstanding presence of tax-exempt housing bonds as part of the municipal market, we recommend that tax-exempt housing bonds be considered municipal securities.

M.4.a.3 *How should project finance issuances be classified for the purposes of Items 6 and 7? For example, should they be classified as: (1) corporate issuers identified in Section 3(a)(62)(A)(iii) of the Exchange Act; (2) issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction; or (3) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.*

Response: Project finance issuances should be classified as corporate issuers.

Project finance is typically used to finance single-asset or defined-assets corporations that are primarily established to 1) finance a joint venture 2) limit the risk of the owner(s) to a limited capital infusion with the remainder of funding requirements being borrowed funds, and/or 3) optimize a corporation's capital cost because, at times, it is less expensive to fund at the asset level than at the broader corporate level.

A "project finance transaction" can be defined as a limited or non-recourse long-term financing structure usually used to finance one or a group of physical assets in the natural resource, energy, infrastructure, or industrial enterprises areas (i.e. a project) for which debt is serviced primarily by cash flow generated by that project. Project finance debt usually benefits from a comprehensive set of contracts that allocate risks to the parties that are best able to deal with them. Therefore, in addition to the key business risks of construction and operations phases and an entity's financial risk profile, contract and counterparty risks are key elements of the rating process. The contracts will often define the nature and scope of operations, financial covenants to maintain solvency and liquidity, and security pledges of project assets and rights without recourse to the project sponsor (parent) and other shareholders. Some project financings may include limited recourse, but it is usually only a temporary feature covering specific risks (for example, completion during the construction of the project).

While there are slight differences in project finance criteria versus corporate criteria, the same general approach is utilized. That is, Ratings Services looks at the relationship between a project's business risk profile and financial risk profile to determine the credit rating. A project's ability to generate ongoing cash flow and what can change the cash flow generation profile is the key overarching risk when performing a credit analysis. Since the same general rating approach is utilized when analyzing a project as a corporate obligation, we believe that project finance issuances should be classified as a corporate issuer.

M.4.a.4 *How should supra-national issuers (e.g., the World Bank) be classified for the purposes of Items 6 and 7? For example, should they be classified as: (1) financial institutions, brokers, or dealers identified in Section 3(a)(62)(A)(i) of the Exchange Act; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.*

Response: Supra-nationals should be classified as issuers of government securities, municipal securities, or securities issued by a foreign government for purposes of Items 6 and 7 despite the fact that supra-nationals do not fit within the definition of Section 3(a)(62)(B)(v) of the Exchange Act, as more fully explained below. Given that ratings of supra-national issuers must be placed within one of the five existing rating class categories, we believe that the best overall fit is within the issuers of government securities.

Supra-nationals are international institutions whose members are often, but not exclusively, sovereign governments, whose missions span several countries or regions, and whose activities are carried out to achieve certain political and economic ends. There are a variety of supra-nationals and each variety is *sui generis* and not accommodated by the Exchange Act definitions cited in M.4.a.4 (although there are conceptual similarities). Nevertheless, due to the support of the various sovereign governments that control supra-nationals and due to the fact that the mission and scope of these supra-nationals is akin to that of sovereigns, Ratings Services treats the rating of supra-nationals as sovereign, or "foreign government"-related.

Ratings Services rates over twenty five supra-nationals, most of which are headquartered outside of the United States. Twenty two of these are multilateral development finance institutions, multilateral lenders, or multilateral insurers. Although such entities finance or insure loans for international development generally, they do not appear to be a "financial institution" as such term is used in Section 3 (a)(46) of the Exchange Act, being neither a bank (as defined in Section 3(a)(6) of the Exchange Act), a foreign bank (as defined in Section 1(b)(7) of the International Banking Act of 1978) or a savings association. Nevertheless, these financing activities are supported by their respective constituent sovereigns. Many of the remaining rated supra-nationals, such as the European Community, exercise more obvious governmental, health or other policy functions traditionally the province of sovereign issuers. These other supra-nationals are also rated in the sovereign group because of their similarities to sovereign issuers such as "foreign governments."

M.4.a.5 *How should covered bonds be classified? For example, should they be classified as: (1) financial institutions, brokers, or dealers identified in Section 3(a)(62)(A)(i) of the Exchange Act; or (2) issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction? Is there another more appropriate classification? Commenters should provide explanations for their choices.*

Response: Covered bonds generally should be classified as financial institutions, brokers, or dealers identified in Section 3(a)(62)(A)(i) of the Exchange Act, based on the analysis below. However, we would propose that covered bonds that are effectively "repackaged," such as Spanish multi cedulas, be classified as issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act.

Although covered bonds can be structured in many ways, generally covered bonds are not asset-backed securities as defined in Section 3(a)(77) of the Exchange Act. They generally are not collateralized by a self-liquidating financial asset that allows the holder to receive payments that depend primarily on cash flow from the asset. Covered bonds are dual recourse debt instruments. The covered bondholder's primary source of payment of interest and repayment of principal is the issuing bank (irrespective of the performance of the assets securing the covered bond). Only if the issuing bank fails to pay do the covered bondholders have priority recourse to a segregated pool of assets (the "cover pool" - typically residential or commercial real estate loans, or public sector assets).

These assets remain on the balance sheet of the issuer and only become segregated upon the failure of the issuing bank - i.e. the cover pool does not form part of the general insolvency estate of the insolvent issuer. The segregation of the cover pool is typically created in either of the following ways:

- the assets remain on-balance sheet and the legal segregation is created under the relevant covered bond legislation; or

- the assets are transferred to a special purpose vehicle, which is bankruptcy-remote from the issuer, but which is still consolidated with the issuer for accounting and regulatory purposes.

In both cases, if the cover pool is insufficient to repay the covered bonds, the covered bondholders have an unsecured claim against the issuer's estate.

M.4.a.6 *How should municipal structured finance issuers be classified? For example, should they be classified as: (1) issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.*

Response: Municipal structured finance issuers should be classified as "issuers of …municipal securities" if they are issuing on behalf of or in reliance on municipal entities or as "issuers of asset-backed securities…" if they are issuing on behalf of or in reliance on non-municipal (e.g., corporate) entities.

Ratings Services considers a municipality that issues structured debt (i.e., debt supported by a third-party liquidity or credit enhancement facility) on its own behalf as a municipal structured finance issuer. However, if a municipality issues structured debt on behalf of a non-municipal entity (e.g., a corporation), we consider such an issuer to be an issuer of asset-backed securities. In either case, depending on whether the third-party provides liquidity or credit support, our rating of such debt reflects our view of the credit quality of the third-party provider and/or of the entity on whose behalf the debt was issued.

An example of the first scenario, (an issuance of municipal structured finance debt) would be a variable rate demand obligation ("VRDO") issued on behalf of or in reliance on a municipal obligor using liquidity enhancement that, based on our criteria, would require credit analysis of the municipal obligor to determine overall credit quality. An example of the second scenario, (an issuance of asset backed securities) would be a VRDO issued by a municipal entity on behalf of or in reliance on a corporate obligor using credit enhancement such that, based on our criteria, our rating would reflect our analysis of the third-party credit enhancement provider, rather than of the corporate obligor.

Regarding municipal issuers of student loan backed bonds, if such bonds are not supported by any external liquidity or credit enhancement, consistent with the above, we do not consider issuers of such bonds to be issuers of "municipal structured finance". Moreover, although Federal Family Education Loan Program ("FFELP") student loan backed bonds issued by municipalities carry guarantees from government agencies which provide cash flow to the bonds in the case of obligor defaults (and, therefore, issuers of such bonds might be seen to be issuers of municipal structured finance), because the repayment of the bonds is generally dependent on the loan payments from a diversified pool of consumer obligors, we believe that municipalities that issue student loans (whether FFELP loans or private loans) should be classified as issuers of asset backed securities. Please also see our response to question M.4.a.2.

Based on the above, given that municipalities can issue structured debt on behalf of a broad range of obligors, we propose that the nature of the obligor be considered in the classification of such issuers as either "municipal structured finance" issuers or "asset-backed securities" issuers.

M.4.a.7 *How should for-profit health care companies (e.g., hospitals, assisted living facilities, nursing homes) be treated if a municipality issues securities on behalf of the company? For example, should they be classified as: (1) corporate issuers identified in Section 3(a)(62)(A)(iii) of the Exchange Act; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.*

Response: Healthcare revenue bonds or industrial revenue bonds should be classified as corporate securities.

Current laws annually allocate to states a certain amount of tax-exempt bonds for which the proceeds of issuance can be utilized by private corporations for projects that have some public purpose. Typical public purpose projects include construction of hospitals or pollution control equipment for chemical or electric generation facilities. These bonds, typically called industrial revenue bonds, are generally issued by state finance authorities and the proceeds are on-loaned to a corporation. However, repayment of the debt is the sole obligation of the corporation and not the state or municipality. Healthcare revenue bonds or industrial revenue bonds are obligations of the corporation which benefits from the proceeds and are not obligations of the state or of the state finance authority which issued them. The state finance authority loans the proceeds to the corporation which in turn issues a promissory note to a state-appointed trustee to evidence the loan and provide for repayment. The promissory note is in the same aggregate principal amount, and has the same maturity and interest rate as the bonds. The company makes payments to the trustee which in turn uses the proceeds to repay the bonds. The company's obligations under the promissory note are absolute and unconditional. Typically, the issued bonds are senior unsecured obligations of the company and carry the company's senior unsecured debt rating. Based on the foregoing, we believe bonds of this type should be classified as corporate obligations.

M.4.a.8 *How should securitizations of health care receivables be classified? For example, should they be classified as: (1) issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.*

Response: Health care receivable securitizations should be classified as issuers of asset-backed securities.

Health care receivable securitizations may include (1) a finance company, other financial institution or a health care-related corporate entity that sells or contributes a pool of health care receivables into a special purpose entity, or (2) a finance company or other financial institution that sells or contributes a pool of loans that are secured by health care receivables. The repayment of any securitizations in either of these instances is dependent upon the underlying obligors that must repay the health care receivables which may include government related programs such as Medicare or Medicaid, corporate/insurance entities such as HMOs and other medical insurance providers, and possibly consumers as well. These securitizations are typically nonrecourse financings with the originators of these transactions having no obligation to repay the securities. Investors in these transactions rely for debt service on the cash flow from the pool of receivables or the pool of loans backed by the receivables. This would generally place these securities within the definition of asset backed securities in Section 3(a)(77) of the Exchange Act.

M.4.a.9 *How should insurance-linked securities be classified? For example, should they be classified as: (1) insurance companies identified in Section 3(a)(62)(A)(ii) of the Exchange Act; or (2) issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction? Is there another more appropriate classification? Commenters should provide explanations for their choices.*

Response: Insurance-linked securities should be classified as insurance companies. Insurance-linked securities are predominantly catastrophe (natural disaster-related) or "cat" bonds or XXX/AXXX reserve (redundant reserves related to term or universal life insurance policies whereby the required regulatory reserve amounts are funded by the capital markets) financings. Insurance-linked securities allow insurance companies to transfer some portion of a predetermined catastrophe/insurance risk from a ceding insurer (cedant) to the capital markets (investors) and can be a substitute for reinsurance. Insurance-linked securities typically involve a risk transfer agreement between a cedant (insurance company) and a reinsurance company which is an insurance contract. The reinsurance company, a special purpose entity, issues the insurance-linked securities, the issuance proceeds of which are invested. As a general rule, if no event triggers the insured risk during the term of the securities, investors will be paid in full at maturity. The occurrence of an insured risk will result in a claim under the insurance contract, which will be paid using the investors' collateral and will, therefore, result in a loss for investors.

M.4.a.10 *Are there other types of obligors, securities, or money market instruments that share characteristics of one or more classes of credit ratings identified in Section 3(a)(62)(A) of the Exchange Act? If so, identify each such type of obligor, security, or money market instrument, provide a proposed classification, and explain the reason for the proposed classification.*

Response:

1) *Energy prepay* transactions should be classified as a corporate issuer. In these transactions a municipal utility issues tax-exempt debt through a financing authority and then uses the proceeds to prepay for energy by sending the proceeds to an energy supplier (a corporation) for energy to be delivered over time on a preset schedule. The energy supplier is then obligated to send enough energy at various points in the future so that when the energy is utilized by the municipal utility (which is done by selling it to its ratepayers) enough cash will be generated to repay the issued debt and provide the municipality with a small amount of additional funds. Energy price and volume risks are taken solely by the energy supplier. If the energy supplier fails to deliver the contracted energy the financing authority is not obligated to repay the debt. Therefore, the risk in these transactions is the counterparty risk of the energy supplier. The credit ratings on these transactions are, therefore, tied to the corporate credit rating of the energy suppliers.

2) *Airline Enhanced Equipment Trust Certificates ("EETCs")* should be classified as corporate debt. Our ratings on EETCs consider the airline's corporate credit rating determined in accordance

with our corporate rating methodology - the likelihood that the airline would successfully reorganize in Chapter 11 and choose to affirm debt or lease obligations that secure the EETCs (so as to maintain use of the related aircraft) and, failing that, the likelihood that creditors could sell repossessed aircraft collateral to repay the EETCs. Accordingly, our ratings on EETCs relate to a single airline credit and the rating moves up and down with that of the airline. Because the aircraft debt or leases that secure an EETC are direct obligations of the airline, the primary source of cash flows to service EETCs is the general operations of the airline, not a project or the operations of a particular aircraft. The legal entities used in EETCs are simple legal shell entities created to pass through cash flows to pay the certificates. The original basis for this type of financing, railroad equipment trust certificates, dates from the nineteenth century.

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We at Ratings Services appreciate the opportunity to comment on the matters addressed in the Release and look forward to working with the Commission in moving towards final rulemaking. Please feel free to contact me, Adam Schuman, Executive Managing Director and Chief Legal Officer, at (212) 438-5412, or Rita Bolger, Senior Vice President and Associate General Counsel, Global Regulatory Affairs, at (212) 438-6602, with any questions regarding our comments.

Sincerely yours,

Deven Sharma
President
Standard & Poor's

cc: Hon. Mary L. Schapiro, Chairman
Hon. Elisse B. Walter, Commissioner
Hon. Luis A. Aguilar. Commissioner
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