Kroll
BondRatings™
Our name is on the line

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

August 8, 2011

Re: Release No. 34-64514; File No. S7-18-11;
Nationally Recognized Statistical Rating Organizations: Proposed Rules

Dear Ms. Murphy:

This letter is submitted by Kroll Bond Rating Agency, Inc. ("KBRA"), a Delaware corporation that is registered as a nationally recognized statistical rating organization ("NRSRO") under the Securities Exchange Act of 1934 ("1934 Act"), in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding the proposed rules set forth in Release No. 34-64514 (the "Release"); File No. S7-18-11, dated June 8, 2011 (collectively, the "Proposed Rules"). The Proposed Rules are intended to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").

## I. INTRODUCTION AND OVERVIEW

Our comments reflect our position as a new rating agency. KBRA was formed in 2010 in response both to perceived failures by the major ratings agencies and to calls for increased alternatives to the ratings industry status quo. KBRA has two business models operating simultaneously. The subscription model is primarily devoted to financial strength ratings on more than 16,000 financial institutions, including commercial banks, thrifts and credit unions, among others. Our subscribers pay us for these ratings. Our second business model is the rating of individual securities issues, and is reliant on fees paid by bond issuers.

We are privately held, but have investors who represent more than 35 pension funds and family offices. At KBRA our primary obligation is to provide timely, accurate assessments of credit risk to the buyers of securities that we rate. Our focus is on *investors*. We believe that this focus will be the key to our future contribution and success.

To that end, we have built a team of highly seasoned credit market professionals from different disciplines in order to respond to the needs of investors, bankers and issuers seeking a new ratings approach that restores confidence in the value of ratings. We intend to offer the marketplace ratings and analysis which retain aspects of proven approaches to credit analysis, but with a rigorous focus on ratings accuracy, due diligence, transparency – which we define as disclosure regarding the rationale underlying a rating – and post-issuance surveillance.

It is with this background that we offer our comments. KBRA appreciates the Commission's careful attention and thoughtful approach to the issues addressed in the Release. Given the broad scope of the Proposed Rules, we have chosen to organize our comments in a way that highlights our interest in what we believe should be the guiding principles in the Commission's rulemaking, namely:

- Promulgating or amending rules with a view to eliminating barriers to entry and promoting competition;
- Promulgating rules with the specific goal of promoting innovation, which will facilitate the growth of smaller NRSROs and encourage new entrants to the industry; and
- Promoting market standards that will raise the bar on the ratings industry.

## II. ELIMINATE BARRIERS TO ENTRY, AND PROMOTE COMPETITION

**A. <u>Background</u>:** The credit rating agency industry has high barriers to entry, including the financial resources and staff required to determine credit ratings and a demanding NRSRO registration process. The Credit Agency Reform Act of 2006 ("2006 Act") was the first step in regulating the industry; however, the rules promulgated thereunder contain provisions that are, in practice, anti-competitive and discourage new entrants to the rating agency arena. Likewise, certain provisions of Dodd-Frank, and the Proposed Rules, would compound the barriers to entry.

At KBRA, we support the goals of Dodd-Frank, which include increased accountability and transparency, and we support the work of the Commission in pursuing those goals. At the same time, we are bound by the Commission's rules which, with very few exceptions, are the same rules that apply to large NRSROs. Many of these rules are expensive and burdensome to implement – especially for newer, smaller NRSROs – and do not appear to promote the stated legislative goal of fostering competition. The Commission should aggressively pursue this goal by taking into account the dominance of the very large players, and expanding small company exemptions that are needed to level the competitive field.

An example in the Proposed Rules where the Commission acknowledges that rulemaking can be executed in a way that makes some allowance for the differences in NRSRO size is in the segregation of the marketing and ratings functions. Further, in addition to considering the current Proposed Rules, KBRA recommends that the Commission use the opportunity afforded by this substantial rulemaking proposal to refine current rules to address the core 2006 Act policy goal of fostering competition. Each of these ideas is explored below.

**B. <u>Proposed Rules Regarding Conflicts of Interest Relating to Sales and Marketing [Proposed New Prohibited Conflict (new paragraph (c)(8) of Rule 17g-5)]</u>:**

- ***In the Proposed Rules, the metric for "smallness" should be revenues:*** The Proposed Rules with respect to segregation of the marketing and rating functions provide a possible exemption for "small" NRSROs. [See footnote 49 and accompanying text.] KBRA acknowledges and appreciates the Commission's anticipation of potential practical difficulties caused by this Proposed Rule. With regard to this exemption, KBRA would suggest that the use of a total assets benchmark is not the appropriate measure. Total assets may have very limited correlation to the marketplace presence of a service organization such as an NRSRO. KBRA believes that total revenue is the correct yardstick to serve as a guide to whether an NRSRO should be considered "small." The relevance of revenue seems to be borne out by the detailed revenue reporting already required under Rule 17g-2 and in Form NRSRO. Based upon our view of the credit rating agency marketplace, KBRA believes that a total revenue threshold of $100 million would promote competition by allowing more flexibility for firms in a relatively early-growth stage.

- ***The exemption for smaller NRSROs should be self-executing:*** If an "absolute" requirement on segregation of marketing and ratings personnel were to be imposed, so long as the Rule clearly articulates how the aimed-for segregation of duties is to be achieved (both externally and internally), KBRA believes that it will be able to meet any reasonable requirements, and operate effectively within such an environment. Nonetheless, we strongly endorse the idea of a self-executing exemption from the absolute prohibition that would be available to smaller firms on the basis of an objective test, such as revenue. As discussed below, this self-executing exemption could be applied in other contexts, such as the "Ten Percent Rule."

- ***Barriers to effective communication with investors and issuers should be avoided:*** While Dodd-Frank mandates separation of those responsible for sales and marketing from those responsible for determining credit ratings, care must be taken when enforcing this type of prohibition. The benefits of reduced conflicts must not come at the cost of limiting the gathering of information by the marketplace. For example, if "marketing" is defined too broadly, then rating analysts may be precluded from having meaningful exchanges with potential and existing users of ratings. Creating this kind of barrier to robust dialogue runs counter to the aims of Dodd-Frank. To promote increased transparency to the marketplace, KBRA believes that those who are best equipped to describe and answer questions about ratings methodologies and processes should be allowed to do so, without violating the mandated separation and without such dialogues constituting "marketing." If Dodd-Frank is construed as prohibiting analysts from discussing how credit ratings are determined with market participants, it would seem to contradict the statutory goals of increased disclosure and transparency. We therefore urge the SEC to carefully consider the practical consequences of this mandated separation.

- ***Prohibitions on internal communications should not put an undue burden on small rating agencies:*** Creating an absolute prohibition on having a person within an NRSRO who "participates in" sales and marketing, and also "participates in" determining or monitoring a credit rating, or developing or approving rating procedures or methodologies, will create practical difficulties. These difficulties can occur in both external communications (as described above), and internal communications. Compared with some of its competitors, the organization chart of a new and/or smaller NRSRO will be relatively flat: oversight of sales and marketing, on the one hand, and the ratings function, on the other, converge with fewer intervening levels of management than at larger credit rating agencies. In that context, it may be difficult to ensure that, for example, a person who "participates in" sales or marketing will not also "participate in" the development or approval of a rating methodology. Whether an employee is deemed to "participate in" the subject activities will largely depend on how this phrase is defined.

- ***Avoid definitions that compel large size:*** In seeking to adopt a final Rule, it will be important for the staff to articulate the intent of the Rule by defining such terms as "participates in," "marketing," and "developing or approving procedures or methodologies." These definitions should make clear that the Rule does not mandate, explicitly or implicitly, minimum numbers of employees, or layers of management. More specifically, terms such as "participate," "approval" and "marketing" must be narrowly construed. To do otherwise runs the risk of making compliance a practical impossibility for all but the very largest agencies, which is the opposite of the intent of Dodd-Frank (and the 2006 Act). This is especially the case for a start-up firm that is seeking to enter the credit rating business: the firm must present itself and its personnel to issuers, investors and others in order to establish the trust and credibility necessary to succeed in the marketplace. A view of "marketing" that inhibits a new firm from articulating its approach to ratings could create an insurmountable barrier to entry.

  The staff should consider use of examples of what activities would not be deemed to be "marketing." In doing so, the staff should carefully consider whether the intent of the Proposed Rule is already addressed by the prohibition in Rule 17g-5(c)(6) on negotiation, discussion or arrangement of fees by a person who participates in determining credit ratings, or developing or approving credit rating procedures or methodologies. If "marketing" is defined narrowly, as it must be (for reasons stated above), the Proposed Rule may be unnecessary and redundant.

## C. Proposed Rules Regarding Internal Control Structure [Rules under Section 15E(c)(3)(A) of the 1934 Act]; and Credit Rating Methodologies [Rules under Section 15E(r) of the 1934 Act]:

- ***Need to foster competition:*** Where the Commission is duly exercising its discretion in the implementation and enforcement of requirements under Dodd-Frank [see Release at footnote 1079 and accompanying text], it should continue to do so with an over-arching view to implementing the 2006 Act mandate to foster competition in the industry, and avoid taking actions that create disincentives to credit rating agencies that are considering whether to register as an NRSRO. Similarly, the Commission should avoid creating a regulatory environment for NRSROs that is so burdensome and complicated that only the large NRSROs, which have enormous resources at their disposal, can address the multitude of complex requirements.

- ***Avoidance of prescriptive controls:*** As stated above, in using its discretion, the Commission should avoid implementing rules that would of necessity fall with the heaviest burdens on firms that are starting out in the business. KBRA became an NRSRO in 2010 through the acquisition of LACE Financial. We are seeking to significantly grow the company, including building a business that will compete with the incumbent NRSROs and provide an alternative to the market in rating structured finance transactions, as well as other securities and sectors. To accomplish this, KBRA has hired many new staff, and is in the process of building out its methodologies, models, policies and procedures, with the goal of publishing ratings that are timely, accurate and worthy of the market's trust.

  In this context, KBRA agrees strongly with the Commission's preliminary decision not to prescribe the factors that must be included in an NRSRO's internal control structure. [See footnote 11 and accompanying text.] In general, KBRA believes that the Commission should refrain from a prescriptive regulatory approach. Such an approach limits the flexibility not only of the regulated companies, but also the ability of the staff to assess an NRSRO in a holistic way, taking into account the types of business conducted, the stage of development of the NRSRO, and effectiveness of the controls that have been established. KBRA believes that an approach that is based on the particular facts and circumstances relating to an NRSRO will encourage firms to be innovative, which promotes the public policy objective of fostering competition while addressing regulatory and business purposes with respect to the establishment, maintenance and enforcement of a firm's internal control structure.

- ***Standards for assessment of controls:*** In light of the above, KBRA believes that the Commission's rules should seek to ensure that NRSROs establish a control structure that is reasonably designed to achieve control objectives that are consistent with the goals of producing accurate ratings and, more generally, fulfilling the needs of investors and the marketplace for independent credit and financial strength ratings. [See footnote 34 and accompanying text.] Allowing for some flexibility in approach will allow NRSROs to differentiate themselves to investors and the market, and will have a positive effect on competition.

- ***Oversight by management and the board:*** How the internal control structure is overseen by management, and the role of the board of directors, will vary greatly from company to company. Management reports to the board (including an annual report, which would also be filed with the Commission) are likely to be key elements of the board's ability to oversee the effectiveness of the internal control structure. Since board oversight will be promoted by open and free dialogue with management, the Commission should not impede such communication when imposing requirements that make some or all parts of such management reports publicly available. As noted, NRSROs have an incentive to differentiate their work product, at least in part, on the basis of the controls that they maintain. However, imposing prescriptive requirements on reporting of controls may lessen the ability to differentiate, will create additional costs, and may serve to chill the open communication of ideas between management and the board.

**D. Proposed Rules Regarding Form and Certifications to Accompany Credit Ratings [Proposed Disclosure Form to Accompany Rating Actions (amended Rule 17g-7)]:**

- ***Form disclosure may not enhance transparency:*** KBRA supports increased disclosure and transparency for investors and minimizing conflicts of interest as beneficial to the marketplace. However, the proposed disclosure form, intended to accompany every rating action and specifying language to be provided in support of a rating rationale, likely will not achieve its desired effect, because standardizing such disclosure will make it less meaningful. As proposed, the form of disclosure is overly detailed, and would likely result in boilerplate disclosure that could tend to obfuscate rather than clarify. KBRA also believes that the disclosure form would impose significant administrative and recordkeeping tasks on credit rating agencies, and would tend to homogenize their work product. Moreover, monitoring compliance with this form will absorb the time and resources of both the rating agencies and the SEC examiners, while making it more difficult for the marketplace to differentiate one rating agency from another. Disclosure requirements should be flexible enough to enable NRSROs to make distinctive statements that promote both transparency and competition.

- ***Focus regulation of disclosure on output:*** KBRA believes that regulation should focus on making transparent to the marketplace the quality of rating agency output: are the ratings accurate; and are they monitored and updated promptly. Regulation that focuses on clear disclosure of accuracy of ratings, and helps investors see how responsive those ratings are to changes in credit quality, will be pro-competitive, and KBRA would suggest that is where the focus of rule-making should be. More specifically, KBRA believes that the focus of disclosure should be on elements such as those specified in Paragraph (a)(1)(L), i.e., the historical performance of a rating, and (when applicable) the expected likelihood of default and loss. By contrast, much of the mandated disclosure, such as the disclosure of assumptions (Paragraph (a)(1)(M)), will tend to become a mechanical exercise in which the NRSRO seeks to provide disclosure that is sufficiently vague so as to be unimpeachable, but ultimately not useful as a means of imparting insight about a credit rating.

- ***Disclosure must be useful, and ideally will promote competition:*** KBRA believes that creating a template that all NRSROs must follow will diminish the NRSROs' ability to differentiate their product, and is contrary to the spirit of legislation that forms the backdrop of NRSRO regulation (i.e., the Dodd-Frank Act and the 2006 Act).

  To the extent that some type of formatted disclosure is ultimately required, KBRA believes that the Commission should provide sufficient flexibility to allow for disclosure that is meaningful in the context provided. In KBRA's specific circumstances, our Subscription Rating Service determines and offers to subscribers approximately 16,000 financial strength ratings, most of which are updated quarterly. Our view is that the proposed Rule should permit, for example, a disclosure that provides relevant information with respect to an industry group (such as commercial banks or thrifts), rather than an institution-by-institution template disclosure that may in fact be less informative to the user.

In addition, some of the disclosure, such as amended Paragraph (a)(1)(N) (with respect to representations, warranties and enforcement mechanisms), would seem to have relevance at a point in time (e.g., at the time of publication of an initial credit rating), but could be viewed as superfluous at later points in time, since (as with representations and warranties) those factors will likely not change in the course of a rated security's existence.

## E. Review Existing Rules and Reconsider Requirements Not Mandated by Statute That Impair Competition and/or Deter Registration as an NRSRO:

KBRA believes that the Commission should use the opportunity presented by the current significant rulemaking proposal to reconsider some of the rulemaking that has been done since, and under the rubric of, the 2006 Act. Certain rules and requirements have created or compounded barriers to entry, but were not required by the 2006 Act.

- ***Ten Percent Rule:*** An example of such a provision is Rule 17g-5(c)(1), which prohibits an NRSRO from issuing or maintaining a credit rating solicited by a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equal to or in excess of ten percent (10%) of the total net revenue of the NRSRO for such fiscal year ("Ten Percent Rule"). For larger, well-established NRSROs, the amount required to reach ten percent of net revenue – and thereby violate the Ten Percent Rule – would be substantial, and is unlikely to be breached if the firm has made any effort to diversify its client base. By contrast, the smaller net revenue "denominator" for a smaller NRSRO or a new entrant to the market creates a very real danger of violating the Ten Percent Rule when it receives rating fees for a single transaction. While we recognize that overdependence on a single client or a small number of clients may pose a potential for conflicts in some contexts, we believe that these potential conflicts – like many others identified in the Commission rules – can effectively be addressed through disclosure and do not require an absolute prohibition as is currently the case, particularly given the extremely anti-competitive impact of a complete bar on new entrants. The notion that a new market entrant must view revenue, which is typically a positive occurrence, as an event that could cause violation of an express prohibition (i.e., the Ten Percent Rule) discourages entry into the industry, and does not facilitate the success of new entrants. In implementing the Proposed Rules, the Commission should adopt a self-executing exemption based on revenue. We respectfully suggest that the implementation of such a mechanism for exemption in the context of the Ten Percent Rule, coupled with effective disclosure requirements, would serve the legislative and public policy intent of the 2006 Act of fostering competitive market forces in the credit rating industry.

## III. DESIGN RULES THAT PROMOTE INNOVATION, WHICH WILL FACILITATE GROWTH OF SMALLER NRSROS AND ENCOURAGE NEW ENTRANTS

**A.** **Background:** Interestingly, the Proposed Rules were published in the Federal Register just ten days shy of the four-year anniversary of the first rulemaking under the 2006 Act. Yet despite the explicit legislative intent (and market need) to foster competition, the landscape of the credit ratings industry has changed very little. KBRA believes that this can be attributed at least in part to the creation of regulatory burdens that, though designed to apply equally to all NRSROs, in practice weigh disproportionately on smaller NRSROs.

As a practical means of fostering competition, we believe the Commission should adopt an approach to rulemaking that promotes innovation, particularly by new and smaller firms. The corollary is that prescriptive rulemaking should generally be avoided, since it will at once impose administrative and compliance obligations that can be absorbed more easily by larger firms, and will also perversely push in the direction of a homogenized ratings industry.

We have detailed below some areas that are of particular concern in the current Proposed Rules, and have also indicated several points we believe should be borne in mind in the application and enforcement of current rules.

- ***The cost of an independent Board, and the scope of Board functions, should not be inadvertently expanded:*** KBRA believes that there is much merit to a corporate governance structure that includes board representation of independent directors. However, it is also clear that there is an attendant cost to such structure. Among other things, the firm is faced with D&O insurance-related costs. KBRA believes that the current rulemaking process offers the opportunity to provide clarity to certain provisions of Dodd-Frank. Specifically, while it is tempting to set forth a Rule that simply mirrors the statute [see footnote 343 and accompanying text], it would be helpful to provide greater guidance to confirm that the board is not required to approve or pass judgment on, for example, "qualitative and quantitative data and models." Taken to an extreme, this could bring the board to a level of involvement that is no different than ratings analysts. This is surely not the legislative intent. Providing a clearer separation of the board function from the day-to-day determination of ratings will give candidates considering service as an independent director greater certainty, and could have the salutary effect of diminishing D&O costs. In addition, since the cost of independent directors is another factor that is more keenly felt by smaller NRSROs or prospective registrants, the Commission should take a flexible approach to compensation arrangements (including an allowance for compensation that correlates to the growth of the business), such as awards of equity (stock or options) in lieu of cash compensation, and provision of a bonus structure for meeting pre-set directors' goals.

- ***The examination process can provide valuable input for smaller NRSROs and new entrants if the process is streamlined:*** The Commission notes at several points in the Release the value of the Commission's NRSRO examination process as a means of obtaining data. [See, for example, footnote 12 and accompanying text.] The Commission views this data as a crucial underpinning for eventual rulemaking. KBRA believes that the examination process can be at least as useful to NRSROs, particularly those that are new and/or are seeking to grow their business. A thorough examination by skeptical and informed examiners can provide healthy insights to management. However, for new and growing NRSROs, the value of those insights begins to erode if the examination process takes too long. A new or growing business seeks to evolve quickly. For the same reason, feedback from examinations, including perceived deficiencies and remedial actions, should be made known as soon as possible, so the NRSRO can take corrective actions as needed. In this spirit, KBRA requests that the Commission consider ways that the examination process can be streamlined (for example, by setting a strict four week "start to finish timeline" for smaller NRSROs) and promptly provide feedback to NRSROs, especially those that are smaller and are seeking to grow. Such feedback will serve the Commission, the credit rating industry and the public interest.

- ***Fast track for smaller NRSRO applications:*** For similar reasons, KBRA believes that a "fast track" method of applying for exemptive relief would enable new and growing NRSROs to achieve certainty of regulatory boundaries as they seek to innovate, grow and expand their businesses. While such a fast-track approach would help all NRSROs, it is most critical for businesses in their formative stages. KBRA believes that the 2006 Act's directive to foster competition mandates that the Commission seek to expedite reasonable applications for relief made by smaller NRSROs, bearing in mind that such applications will tend to accumulate costs (which cut more deeply to smaller NRSROs), the longer a final decision is withheld. In addition, the Commission should consider whether there are matters that it could identify that do not require a full exemptive application process, but rather could be addressed by having a registrant notify the Commission, perhaps coupled with additional public disclosure.

- ***Removal of references to specific NRSROs:*** KBRA believes the Commission must creatively seek ways in which to promote the market presence of start-up and emerging NRSROs. Although outside the scope of the Proposed Rules, but in the broader context of the 2006 Act goals, KBRA acknowledges the practical difficulties the Commission has encountered in implementing the Dodd-Frank objective of removing references to credit ratings (and by extension, NRSROs) in Federal rules. Specifically, where there is no reference at all to NRSROs, both regulators and the market have been left searching for an appropriate guide to measuring creditworthiness. We suggest that the Commission should consider providing guidance that discourages investors and others not from the *use* of credit ratings, but from *specifying* the NRSROs that it will rely upon, so that they are not locked in to reliance upon any specific NRSRO. Such guidance may better serve the 2006 Act goal of fostering competition, and thereby more effectively achieve what KBRA believes is the underlying intent of Dodd-Frank.

## IV. RAISE THE BAR ON PROFESSIONAL STANDARDS

We strongly believe that the focus of the Commission should be on supporting those attributes of ratings that best protect investors, namely ratings accuracy and transparency, and not on process-focused mandates that fail to promote the broader purposes of increased competition in the industry and a superior product for the investing public. In other words, the Commission in its rulemaking should pay greater attention to "outputs," by defining, measuring and promoting the disclosure of rating quality, than on "inputs," such as prescribed forms and processes. By doing so, the Commission may best meet its mandate of protecting investors.

### A. Proposed Rules Regarding Public Disclosure of Information About the Performance of Credit Ratings [Proposed Enhancements to Disclosures of Performance Statistics (Amendments to Rules 17g-1, 17g-2 and 17g-7; Instructions for Exhibit 1)]:

- ***More information is needed to better understand the basis for prospective requirements:*** As noted in several contexts above, KBRA generally views prescriptive regulation of NRSROs to be potentially contrary to the spirit of the 2006 Act and the Dodd-Frank Act. However, in the context of performance disclosure, a certain amount of prescription is, we believe, necessary. This is because the purpose of such disclosure is to facilitate comparisons between NRSROs – which KBRA accepts as a legitimate regulatory goal, and one that can be foreseen as enhancing transparency and thus, over time, competition. Since the usefulness of such disclosure is dependent upon the ability to compare one NRSRO to the next on an equal footing, KBRA supports in principle the proposals to amend the instructions to Exhibit 1 of Form NRSRO, as well as the other rules relating to performance and credit rating history disclosure. Nonetheless, KBRA believes that this particular topic may require further explication of the choices made by the Commission in prescribing the substance of such disclosure. Given the potential use of performance statistics when comparing NRSROs, KBRA requests that the Commission provide fuller background on the decisions made – for example, the determination to use the single cohort approach, rather than an average cohort – with a description of potential benefits or limitations of the method(s) chosen.

- ***Standardized definitions acceptable if flexibility is provided:*** KBRA generally agrees that disclosure of performance of similar types of credit ratings should be reasonably comparable from one NRSRO to the next. KBRA therefore agrees in principle that there may be value in having the Commission prescribe standard definitions for certain terms, such as "default," "paid off" or "withdrawn" (as provided in proposed paragraph 4(B) of the Instructions to Exhibit 1), so long as allowance is made for ratings that use a term such as "default" in a non-standard way. Moreover, it would seem to be consistent with this premise that if there is a variation from a standard definition, the reason for such variation should be explained. Similarly, KBRA sees no objection to the requirement in proposed paragraph 2 of the Instructions that each symbol, number or score used in the transition and default disclosures should be defined by the NRSRO. However, when providing performance information, mixing units of study (as contemplated in paragraph 4(A) of Instructions, requiring default and transition matrices comprised of obligors, securities and money market instruments), can create mismatched data and potentially double counting. We suggest modifying the Instructions to meet the goal of clear and comparable disclosure.

- ***Longer grace period for subscription businesses:*** With regard to credit ratings history, as has been noted in the past, there is greater sensitivity when a subscription-based business is required to make public all of its ratings. In particular, this Rule compels the public disclosure of work product for which clients were previously charged, which could be detrimental to the subscriber-based model. Where the subscription rating service is based on a quantitative model, providing extensive historical records creates risk to the firm's intellectual property, since this heightens the possibility that a proprietary process can be reverse engineered. KBRA does not propose to rehash the statements and comments made in connection with the release accompanying Rule 17g-2(d)(3). [See 74 Fed. Reg. 63863 (12/2009).] Nonetheless, in light of the differences in business model, it is worthy of consideration that allowing subscription-based ratings businesses a longer lag-time between the issuance and required public disclosure of ratings (as compared with the timing for issuer-paid ratings) still seems to be a reasonable approach. Accordingly, the bi-furcated "grace period" for reporting should be continued. Moreover, in light of the desirable features of subscription-based models from a public policy viewpoint (to wit, the relative absence of serious conflicts), the Commission should consider expanding the grace period (e.g., to three years) for subscriber-based ratings history.

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In summary, KBRA is concerned that the Proposed Rules impose significant regulatory burdens, which create additional barriers to entry, and a disincentive to any credit rating agency considering becoming an NRSRO. Such an approach could similarly impede the ability of existing smaller NRSROs to compete with industry giants, which is contrary to the express objectives of Congress. We therefore request that the Commission impose prescriptive regulations sparingly. The Commission should also consider whether some of the burdens imposed on NRSROs by the Proposed Rules – particularly with respect to disclosures that are required to be made in the context of a securities offering – might be more appropriately addressed by other market participants, such as issuers and securitizers.

Thank you for giving us the opportunity to provide our comments. We hope you find them useful, and that you will give them due consideration. Please call me at (917) 281-3257 with any questions that you might have or to discuss this matter further at your convenience.

Very truly yours,

Jules B. Kroll
Chairman and Chief Executive Officer
Kroll Bond Rating Agency, Inc.

cc:
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