



Insight beyond the rating.

Filed Electronically

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Secretary
U.S. Securities and Exchange Commission
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Re: *Proposed Rules for Nationally Recognized Statistical Rating Organizations;*
File No. S7-18-11

Dear Ms. Murphy:

DBRS, a nationally recognized statistical rating organization ("NRSRO"), appreciates the opportunity to comment on the above-referenced rule proposals designed to implement Title IX, Subtitle C of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").¹

GENERAL COMMENT ON THE NRSRO REGULATORY REGIME

DBRS is committed to producing high-quality credit ratings and to conducting its business with integrity and transparency. To this end, DBRS supports a robust, yet sensible, NRSRO regulatory regime that fosters high industry standards and enables investor and market education, while respecting each rating agency's right to determine credit ratings in accordance with procedures and methodologies of its own choosing. Although credit ratings are only one tool to be used in making investment decisions, the tool is an important one.

In the current rulemaking, the Commission proposes substantial additions to and revisions of the comprehensive regulatory regime established under the Credit Rating Agency Reform Act of 2006 ("2006 Act"). Most of the proposed rule amendments and new rules are specifically mandated by the Dodd-Frank Act, with little room for discretionary input by the Commission. Although DBRS accepts the need for some regulatory change, DBRS is compelled to note that the Dodd-Frank Act's approach to NRSROs has inherent contradictions that may impede, rather than promote, investor protection.

¹ *Proposed Rules for Nationally Recognized Statistical Rating Organizations*, Exchange Act Release No. 64514 (May 18, 2011), 76 Fed. Reg. 33420 (June 8, 2011) ("Proposing Release").



The first contradiction relates to the mandated rules' effect on competition. Although fostering competition among rating agencies was a primary goal of both the 2006 Act and the Dodd-Frank Act, the proposed rules will be so costly to implement that additional credit rating agencies are unlikely to register as NRSROs and the existing pool of registrants may contract. According to the Commission's estimates, the projected initial expense attributable to the Dodd-Frank NRSRO rules for a firm of DBRS's size would exceed \$1.8 million, with annual expenses thereafter of roughly \$1.3 million.² The cost of complying with the new regulations, when added to the substantial cost of complying with the existing NRSRO regulations, threatens to overwhelm all but the largest rating agencies.

The second contradiction is the fact that although NRSRO registration is voluntary, the rating agency regime created under the Dodd-Frank Act in many respects is more onerous than the mandatory regimes imposed on broker-dealers and investment advisers. For example, under the new rules, an NRSRO will have to disclose up to two dozen specific items of information each time it issues a credit rating.³ On the other hand, a broker-dealer who publishes a research report on an equity security must disclose only basic information about conflicts of interest and its rating system;⁴ while an investment adviser publishing an opinion about a security has only a general fiduciary duty to reveal conflicts of interest. Furthermore, while the chief compliance officers of broker-dealers, investment advisers and NRSROs all must annually review the sufficiency and effectiveness of their compliance programs, only NRSROs must file reports of such reviews with the SEC.⁵

² Proposing Release at 310-311, 315, 317, 320-321, 323-330, 332-34, 336-37 and 394-396, 436-443, 76 Fed. Reg. at 33501-33508, 33523-33524 and 33534-33536. As noted elsewhere in this letter, DBRS believes that the Commission has grossly underestimated the costs of complying with some of these rules. DBRS also believes that the burden on smaller rating agencies may be even more severe than the Commission's numbers suggest. While some aspects of the proposals (such as disclosures and updates) scale in a linear fashion with the number of published ratings, other costs (such as the development of new disclosure templates and implementing new systems) are fixed. These fixed costs have a disproportionate impact on smaller firms.

³ See proposed Rule 17g-7(a), mandated by §932(a)(8) of the Dodd-Frank Act.

⁴ See FINRA/NASD Rule 2711 and NYSE Rule 472. A research report on a debt security does not trigger even this level of disclosure.

⁵ Contrast FINRA Rule 3010 applicable to broker-dealers; Rule 206(4)-7 under the Investment Advisers Act of 1940 ("Advisers Act") applicable to investment advisers; and Rule 38a-1 of the Investment Company Act of 1940 ("Company Act") applicable to mutual fund managers, with proposed Rule 17g-3(a)(8), mandated by Section 932(a)(5) of the Dodd-Frank Act.



At some point, the unusually harsh burdens attendant to NRSRO registration will dissuade rating agencies from subjecting themselves to that regime. DBRS asks the Commission to keep this in mind as it decides whether to exercise its discretion to impose obligations on NRSROs that go beyond what the Dodd-Frank Act requires.

The third contradiction lies in the fact that, while directing the Commission to impose costly and onerous new obligations on rating agencies who choose to register as NRSROs, the Dodd-Frank Act also directs the Commission to remove all references to credit ratings from the federal securities regulations.⁶ In issuing this latter directive, Congress appears to have ignored the fact that the SEC repeatedly tried, without success, to identify a workable substitute for NRSRO ratings in rules such as the net capital rule under the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 2a-7 under the Company Act.⁷ Forbidding the Commission to rely on NRSRO ratings for safety and soundness purposes leads to the anomalous situation in which the Commission has one outstanding proposal to impose new constraints on NRSROs and another outstanding proposal to permit the use for regulatory purposes of credit risk assessments that entail no regulatory protection at all.⁸

DBRS respectfully submits that the Commission cannot find both that the Dodd-Frank-related NRSRO rules are necessary or appropriate in the public interest or for the protection of investors, and that the credit risk assessments of unregistered entities are as suitable for regulatory purposes as are the ratings of NRSROs.

⁶ Dodd-Frank Act, §939A.

⁷ See *References to Ratings of Nationally Recognized Statistical Rating Organizations*, Exchange Act Release No. 60790 (October 5, 2009), 74 Fed. Reg. 52374 (October 9, 2009); *Proposed Rule: References to Ratings of Nationally Recognized Statistical Rating Organizations*, Exchange Act Release No. 58070 (July 1, 2008), 73 Fed. Reg. 40088 (July 11, 2008); *Concept Release: Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws*, Exchange Act Release No. 47972 (June 4, 2003), 68 Fed. Reg. 35258 (June 12, 2003); and *Concept Release: Nationally Recognized Statistical Rating Organizations*, Exchange Act Release No. 34616 (August 31, 1994), 59 Fed. Reg. 46314 (September 7, 1994).

⁸ See, e.g., *Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934*, Exchange Act Release No. 64352 (April 27, 2011) at 11, 76 Fed. Reg. 26550, 26552 (proposal to allow assessments of unregistered rating agencies to be used for broker-dealer net capital purposes).

DBRS also finds it ironic that, despite the government’s efforts to marginalize NRSROs and downplay the importance of credit ratings, during the recent debt crisis, members of Congress and the Obama Administration have shown great interest in NRSRO credit ratings on U.S. debt.



COMMENTS ON THE RULE PROPOSALS

Internal Control Structure

Section 932(a)(2) of the Dodd-Frank Act requires NRSROs to establish, maintain, enforce and document an effective internal control structure relating to policies, procedures and methodologies for determining credit ratings. While the statute authorizes the Commission to prescribe the factors that NRSROs must consider in the design of such control structures, the fundamental obligation to have internal controls is self-executing.

The Commission proposes to defer prescribing factors an NRSRO must consider with respect to its internal control structure, although it requests comment on a range of factors that could be required in this or a future rulemaking.⁹

DBRS agrees that rulemaking in this area is not appropriate at present. NRSROs should have the flexibility to implement whatever control structure suits their size and particular business operations. If, at some point in the future, the Commission determines that more formal guidance is in order, it can issue an interpretive release or promulgate a rule at that time.

While deferring the prescription of factors relating to the establishment, maintenance and enforcement of internal control structures, the Commission does propose to address the documentation of such structures, by adding such documentation to Rule 17g-2, the NRSRO recordkeeping rule.¹⁰ DBRS does not object to this proposal.

Nor does DBRS generally object to the proposed implementation of the mandated rulemaking concerning the annual submission of CEO-attested internal control reports. As the Commission notes, proposed Rule 17g-3(a)(7) and (b)(2) closely track the language of the Dodd-Frank Act.¹¹

With regard to other questions the Commission has posed about this part of the proposal,¹² DBRS comments as follows:

⁹ Proposing Release, Request for Comment, Section II.A.1.

¹⁰ See proposed Rule 17g-2(b)(12).

¹¹ Exchange Act § 15E(c)(3)(B).

¹² Proposing Release, Request for Comment, Section II.A.3.



- Except as otherwise described below, DBRS does not believe the Commission should further specify the terms used in proposed Rule 17g-3(a)(7). Instead, each NRSRO should be permitted to report on an internal control structure that is best suited to its size and business operations.

- DBRS does believe, however, that the Commission should confirm that an "effective" internal control structure is one that is "reasonably designed" to achieve its purposes. As the Commission notes, this standard is consistent with the standard used elsewhere in the Exchange Act.¹³

- DBRS strongly believes that internal control reports should be filed with the other Rule 17g-3 annual reports and kept confidential to the extent permitted by law. Nothing in the Dodd-Frank Act suggests congressional intent that such reports be made public, and there is no precedent under the federal securities laws to force a privately-held company like DBRS to publicize its management's assessments of internal operations. Furthermore, users of NRSRO credit ratings already have access to an extensive array of public information about NRSROs, the manner in which they formulate their credit opinions and the historical performance of those opinions. The public does not need access to internal control reports in order to make informed use of NRSRO ratings.¹⁴ Finally, publicizing internal control reports could change the character of those reports, making them less informative and more defensive.

Look-Back Reviews

As is the case with the internal control structure requirements, the Dodd-Frank "look-back" requirements are a mix of self-executing obligations and obligations that depend on SEC rulemaking.¹⁵ With regard to the former, the statute requires an NRSRO to establish, maintain and enforce policies and procedures reasonably designed to ensure that if an employee who participated in determining a credit rating goes to work for the rated entity or the issuer, underwriter or sponsor of the rated security or money market instrument, the NRSRO will review the rating to determine if it was influenced by any conflicts of interest of the employee.¹⁶ The statute also

¹³ *Id.* at 19, 76 Fed. Reg. at 33424.

¹⁴ Indeed, users of NRSRO ratings are far better positioned to assess the integrity and reliability of such information than are users of any other type of investment or market information.

¹⁵ Dodd-Frank Act, § 932(a)(4); Exchange Act, § 15E(h)(4)(A).

¹⁶ This review obligation is limited to a one-year period. The Dodd-Frank Act also imposes a self-executing requirement on NRSROs to report certain employment transitions to the SEC. Dodd-Frank Act, § 932(a)(5); Exchange Act § 15E(h)(5).



obliges an NRSRO to revise a reviewed rating, if appropriate, "in accordance with such rules as the Commission shall prescribe." The Commission proposes to adopt Rule 17g-8(c) to address this second duty.

Under this proposed rule, an NRSRO's look-back procedures would have to include at least three measures. First, the procedures must oblige the NRSRO to "immediately" place the subject rating on credit watch or review, while the NRSRO determines whether or not to revise the rating.¹⁷ In taking this step, the NRSRO must publicly disclose that the reason for the action is the discovery that the rating was influenced by a conflict of interest and the date and associated credit rating of each prior rating action that the NRSRO currently has determined was influenced by the conflict.¹⁸

DBRS believes that these requirements, which are not mandated by the Dodd-Frank Act, may cause market confusion and unnecessary volatility and thus, do more harm than good. DBRS also believes, contrary to what the Commission opines, that these requirements would unlawfully infringe on an NRSRO's right to determine its own rating procedures or methodologies.¹⁹

In the course of conducting a look-back review that leads an NRSRO to conclude that a rating was influenced by an employee's conflict of interest, the NRSRO may also determine that the tainted rating has already been supplanted by a subsequent, unconflicted rating, or that some other event obviates the need to revise the rating. Placing such a rating under credit watch or review would mislead the market into thinking that the current rating is inaccurate, when it is not. Disseminating misleading information of this sort could be enormously disruptive.

Instead of requiring all conflicted ratings to be placed on credit watch or review, DBRS believes that the Commission should allow NRSROs to review the facts and circumstances and determine when such action should be taken in accordance with the NRSROs' own procedures and methodologies.

¹⁷ Proposed Rule 17g-8(c)(1).

¹⁸ Proposed Rule 17g-7(a)(1)(ii)(J)(3)(i). This disclosure would be made in the comprehensive transparency form that now must accompany each NRSRO rating action. See note 3, *supra* and accompanying text.

¹⁹ See Proposing Release at 38, 76 Fed. Reg. at 33429. Section 15E(c)(2) of the Exchange Act prohibits the Commission from regulating either the substance of credit ratings or the procedures and methodologies by which an NRSRO determines credit ratings. This prohibition is a central tenet of NRSRO regulation.



If, notwithstanding the risk of market confusion, the Commission decides to retain the credit watch and ancillary disclosure requirements, DBRS asks that the Commission at least confirm that these obligations do not arise unless and until the NRSRO determines that a rating has been *influenced* by a conflict; merely *identifying* a conflict does not suffice. Although the language of the statute and the rule indicate that a finding of "influence" is the triggering event, the Proposing Release injects some uncertainty about this point.²⁰

The second requirement to be imposed under Rule 17g-8(c) is a duty to ensure that the look-back procedures oblige the NRSRO to promptly determine whether the subject rating must be revised so it is no longer influenced by the conflict of interest and is solely the product of the NRSRO's documented credit rating procedures and methodologies. As the SEC acknowledges, there may be reasons why a rating that has been tainted by a conflict of interest nonetheless is accurate at the time the influence of that conflict is discovered.²¹ DBRS supports this part of the proposal and does not believe that it needs to be more prescriptive.

To fulfill the third requirement, an NRSRO's look-back procedures must require the organization to promptly publish a revised credit rating or an affirmation of the existing credit rating, whichever is determined to be appropriate. In either case, the follow-up rating action must be accompanied by specific disclosure. If the rating is revised, the NRSRO must explain that the reason for the revision is the discovery that the original rating was influenced by a conflict of interest.²² The NRSRO must also identify the date and associated credit rating of each rating that was influenced by the conflict, as well as an "estimate of the impact" the conflict had on each prior rating action.

If, instead of revising a rating, the NRSRO determines to affirm the prior rating, the NRSRO must explain why, notwithstanding the influence of the conflict, it is not revising the prior rating, as well as the date and associated credit rating of each prior

²⁰ *E.g.*, Proposing Release at 39, 76 Fed. Reg. at 33429 ("Proposed paragraph (c)(1) of new Rule 17g-8 would require the NRSRO to have procedures reasonably designed to ensure that, upon the NRSRO's discovery of the conflict, it immediately publishes a rating action placing the applicable credit ratings of the obligor, security, or money market instrument on credit watch or review"); *Id.* at 41, 76 Fed. Reg. at 33430 ("The Commission preliminarily believes that the best approach would be to alert users of the NRSRO's credit ratings as soon as possible after a conflict is discovered").

²¹ *Id.* at 42, 76 Fed. Reg. at 33430.

²² Proposed Rules 17g-8(c)(3)(i) and 17g-7(a)(1)(ii)(J)(3)(ii).



action determined to be influenced by the conflict and the estimated impact of the conflict on each such prior rating action.²³

DBRS supports the proposed requirement that an NRSRO promptly publish a revised rating if such revision is determined to be appropriate. However, for the reasons explained above, DBRS believes that an affirmation of an existing rating that has been found to have been influenced by a conflict should be published only where the NRSRO has determined, based on facts and circumstances, to place the existing rating on credit watch. If the public has not been told that the rating is under review, there is no need to publish an affirmation.²⁴

With regard to the proposed disclosure requirements, DBRS does not object to a requirement that an NRSRO explain that a rating was revised due to a discovery that a prior rating was influenced by a conflict of interest, or if appropriate, why a rating has not been revised notwithstanding such a discovery. However, DBRS does object to the other proposed look-back disclosures.

The proposal to require identification of each tainted rating and disclosure of the estimated impact a conflict had on such rating, whether or not the conflicted rating has been revised, is neither necessary nor appropriate to further the purposes of the statutory look-back provisions. Those provisions are designed to ensure that an NRSRO's outstanding ratings have been determined in accordance with the NRSRO's documented procedures and methodologies, a goal that is adequately addressed by the look-back review and revision requirements alone.²⁵

Moreover, DBRS believes the proposed estimated impact disclosure requirement would be unduly burdensome and could delay the publication of corrective ratings. As explained elsewhere in these comments,²⁶ the excruciatingly detailed rating transparency form that the Dodd-Frank Act mandates for each rating action will already impose a heavy burden on NRSROs and may hamper their ability to publish credit ratings in a timely fashion. Until the practical effects of all the mandated disclosure have been assessed, DBRS urges the Commission to refrain from adding

²³ Proposed Rules 17g-8(c)(3)(ii) and 17g-7(a)(1)(ii)(J)(3)(iii).

²⁴ In such a case, however, the NRSRO should maintain an internal record of its decision not to revise the tainted rating.

²⁵ While look-back reviews are important forensic tests, the results of which should be reflected in CCOs' annual compliance reports, such reviews are not designed to produce specialized compliance reports to be published with each rating.

²⁶ See discussion at page 21 *et seq.*, *infra*.



additional burdens, in the absence of an exquisitely clear need to do so. Such a need does not exist in this instance.

Regardless of whether Rule 17g-8(c) is adopted as proposed, DBRS asks the Commission to clarify that the one-year look-back period established under § 932(a)(4)(A) of the Dodd-Frank Act is measured from the time the NRSRO's employee goes to work for a rated entity or a party related to a rated instrument. The statute is awkwardly phrased on this point, referring to "the 1-year period preceding the date an action was taken with respect to the credit rating." However, the Conference Committee Explanatory Statement accompanying this legislation describes this as a "requirement for NRSROs to conduct a one-year look-back review when an NRSRO employee goes to work for an obligor or underwriter of a security or money market instrument subject to a rating by that NRSRO."²⁷

Measuring the review period from the time an employee goes to work for a rated entity or party related to a rated instrument is consistent with the employment transition reporting requirements that are triggered when certain employees "[obtain] employment with any obligor, issuer, underwriter or sponsor of a security or money market instrument for which the organization issued a credit rating during the 12-month period prior to such employment".²⁸

Confirming the temporal parameters of the look-back requirement will facilitate NRSROs' compliance with the new obligations.

With regard to other questions the Commission has asked about its look-back proposals,²⁹ DBRS comments as follows:

- DBRS does not see a need for the Commission to define what it means to have a conflict of interest "influence" a credit rating. If the Commission does address this issue, however, DBRS asks the Commission to confirm that a finding of influence is required only where the NRSRO determines that, absent the conflict, the NRSRO would have issued a different rating from the one under review. This is the only kind of influence that has practical consequences for the users of the affected credit rating.

²⁷ H.R. Rep. No. 111-517 (2010) (Conf. Rep.) at 871.

²⁸ Dodd-Frank Act, § 932(a)(5); Exchange Act, § 15E(h)(5).

²⁹ Proposing Release, Request for Comment, Section II.C.1. and 2.



○ In determining whether an employment-related conflict influenced a credit rating, an NRSRO would confirm whether or not the applicable rating procedures and methodologies had been followed, paying particular attention to the role played by the subject employee in the rating process. If appropriate under the facts and circumstances, the rating agency might also take steps to confirm any information provided or analyses undertaken by the employee. In some cases, such confirmation may require a *de novo* application of applicable rating procedures and methodologies, while other cases might call for a far less extensive review. NRSROs should retain the flexibility to conduct whatever analysis a particular situation calls for.

○ DBRS believes that all users of NRSRO credit ratings should benefit equally from the look-back provisions, regardless of whether they access those ratings for free or can obtain them only on a subscription basis. Thus, former subscribers who are supplied with a rating that an NRSRO determines to have been influenced by a conflict of interest should be entitled to receive the same corrective information that is available to other users of NRSRO ratings. An NRSRO who distributes its ratings on a subscription-only basis should be deemed to have fulfilled its obligations in this regard if it delivers the corrective information to the former subscriber's last-known business, home or electronic address. Because the look-back review period is limited to one year, this procedure is likely to be effective without imposing an undue burden on the NRSRO.

○ DBRS supports the Commission's proposal to include look-back policies and procedures as records that an NRSRO must retain under Rule 17g-2(a)(9).

Public Disclosure Of Ratings Performance Information

The Commission proposes to substantially enhance NRSROs' obligation to disclose information about the performance of their credit ratings.³⁰ In this regard, the Commission proposes to amend existing requirements relating both to NRSRO performance statistics and rating histories.

Performance Statistics

Exhibit 1 to Form NRSRO currently requires an NRSRO to provide a range of performance measurement statistics for each class of credit rating for which the NRSRO is registered. While the instructions to the Exhibit call for the display of historical transition and default rates over one- three- and ten-year periods, they do

³⁰ See Dodd-Frank Act, §932(a)(8), adding § 15E(q) to the Exchange Act.



not prescribe the methodology by which these statistics must be calculated. Nor do the instructions limit the kinds of additional information that can be included in the Exhibit. As a result, NRSROs' performance measurement reports lack uniformity, which makes it difficult to compare the performance of credit ratings across different rating agencies.

The SEC proposes to rectify this situation by standardizing the production and presentation of NRSROs' transition and default statistics and limiting the types of supplemental information that can be included in Exhibit 1. Under this proposal, performance statistics would have to be computed using a single cohort approach and displayed in up to 39 separate matrices of standardized design.³¹

These matrices would be followed by a clear definition of each symbol, number or score in the NRSRO's rating scale and notches within each category. Next, the NRSRO would have to explain the conditions under which it classifies obligors, securities or money market instruments as being in default.³² Finally the NRSRO would disclose the URL of its corporate website where the rating history information required under new Rule 17g-7(b) is located. Although other performance data could not be included in Exhibit 1, an NRSRO could cross-reference additional data by disclosing the URL(s) where such information can be found.

DBRS believes that additional rating performance transparency helps drive ratings accuracy and improve investor education. DBRS endorses an approach to performance reporting that allows users of credit ratings to compare performance across NRSROs, and thus, generally supports the proposed design and presentation of Exhibit 1's performance matrices. Nevertheless, DBRS believes that the Commission's standardization proposal is not without cost and risk.

The first risk derives from the mandatory use of a single cohort approach to calculate performance. Like some of its peers, DBRS currently uses an average cohort approach to produce its transition and default statistics. DBRS believes that this approach has value because it shows performance over a longer time horizon. While we acknowledge that the single cohort approach may add precision in some cases, we also believe that results will be significantly more volatile within the shorter time

³¹ Although there are only five categories of NRSRO registration, the Commission proposes to subdivide the structured finance category into seven subclasses. When added to the existing three subclasses of government ratings, the total number of categories rises to 13, the performance of each of which would have to be displayed for three separate time frames.

³² The Commission also proposes to establish a standard definition of "default," which would be used for one part of the performance matrix, while the NRSRO's own definition of the term would be used for another part of the matrix. See Proposing Release at note 185.



period, which will make interpreting those results more difficult. In addition, the volatility impact will be amplified for NRSROs with fewer ratings, which could lead to bias against smaller NRSROs. If the single cohort methodology is adopted, DBRS will continue also to publish transition and default statistics based on an average cohort approach to provide a comprehensive picture of its ratings performance and accuracy.

Another risk is that the proposed division of asset-backed securities ratings into seven subclasses³³ would lead to the creation of sparse Transition/Default Matrices, because many NRSROs do not have enough ratings for each proposed subclass to produce statistically significant results. To avoid this problem, DBRS recommends that the class of ABS ratings be subdivided into three groups: "RMBS," "CMBS" and "Other ABS."

A third risk arises in connection with the definition of "default" in proposed paragraph (4)(B)(iii) of the instructions to Exhibit 1. While standardizing this term will enhance comparability across NRSROs, requiring a rating agency to classify an obligor, security or money market instrument as having gone into default when the NRSRO would not choose that classification under its own rating scale and definition comes dangerously close to the prohibition against regulating the substance of credit ratings.³⁴ If the Commission does impose a standard definition of default, DBRS asks that the proposed language be modified to confirm that the "terms of an obligation" include any grace periods within which an obligor or issuer of a rated security might cure the default. DBRS does not see the need for further modification of this language.

In addition to proposing changes to the calculation and display of performance statistics, the Commission also proposes to change the manner in which such information must be disseminated to the public. Under Rule 17g-1(i), as it is proposed to be amended, an NRSRO would be obliged to make its Form NRSRO and Exhibits 1 - 9 publicly available for free from an easily accessible portion of its website.³⁵ DBRS does not object to this amendment, and agrees that a clearly labeled hyperlink to Form NRSRO and its Exhibits on the home page of the NRSRO's website is one way to satisfy this requirement. However, DBRS believes that the "easily accessible" standard also could be met by a hyperlink from a home page to a website's "Regulatory Affairs" or similar section. Given that NRSROs' required

³³ See proposed paragraphs (1)(D)(i) through (vii) of the instructions for Exhibit 1.

³⁴ See note 19, *supra*.

³⁵ As it stands today, Rule 17g-1(i) requires NRSROs to make their Forms and Exhibits publicly available on their websites or "through another comparable, readily accessible means."



disclosures extend beyond Form NRSRO and related Exhibits, rating agencies should have the flexibility to determine which website design best meets all their regulatory obligations.³⁶

Special disclosure requirements are proposed with regard to Exhibit 1. In order to implement Exchange Act § 15E(q)(2)(D), which was added by the Dodd-Frank Act, amended Rule 17g-1(i) would require an NRSRO, in addition to posting Exhibit 1 on its Internet website, to make the document available "in writing, when requested."

Congress's mandate that performance data be delivered in writing is puzzling. There is no evidence that the kinds of parties who wish to review transition and default statistics have any trouble accessing that data through NRSROs' websites. While requiring the delivery of a "written" Exhibit 1 confers no discernable benefit, it will impose very discernable costs on registered rating agencies, should this option ever be invoked. DBRS urges the Commission to permit NRSROs to impose reasonable postage and handling fees as a condition to satisfying any request for a written Exhibit 1.³⁷

With regard to other questions the Commission has asked about its proposed changes to Form NRSRO Exhibit 1,³⁸ DBRS comments as follows:

- DBRS believes that the design and presentation of the proposed Transition/Default Matrix will be clear and informative for the kinds of investors who are likely to have an interest in this type of resource.
- DBRS agrees that obligors, securities and money market instruments that an NRSRO has classified as being in default as of the start date of a period covered by a Transition/Default Matrix should be excluded from the start-date cohort for that matrix.
- DBRS agrees that the start-date cohorts for the Transition/Default Matrices should be comprised of obligors for corporate ratings and securities lines for the various subclasses of structured finance ratings.

³⁶ This is especially important for global credit rating agencies, who are subject to an array of non-US disclosure requirements in addition to the requirements imposed by the NRSRO regime.

³⁷ Consistent with the Commission's general views on electronic communications, DBRS assumes that a "writing" could include an electronic transmission. Thus, DBRS asks that the authorization to recoup the costs of sending information that is easily accessible through the NRSRO's website, include permission to charge processing fees for delivering Exhibit 1 by e-mail as well.

³⁸ Proposing Release, Request for Comment, Section II.E.1.a.



- For the reasons explained above, DBRS believes that the Commission should reduce the proposed number of subclasses of credit ratings for structured finance products identified in the instructions for Exhibit 1. However, with the exception of the asset-backed commercial paper ("ABCP") category, DBRS does not object to the proposed descriptions of the subclasses. With regard to ABCP, DBRS believes that the definition should not be limited to short-term notes issued by ABCP conduits, but instead should include any type of note the NRSRO rates.

Rating Histories

The second category of performance information affected by this rulemaking involves NRSRO credit rating histories. As things stand today, NRSROs are required to disclose two types of historical information. The first is all rating actions and the dates thereof of a random sample of 10% of the outstanding, issuer-paid credit ratings in each class for which the NRSRO is registered and has 500 or more ratings outstanding.³⁹ This information must be displayed in eXtensible Business Reporting Language ("XBRL") format on the NRSRO's corporate Internet website. In addition to this 10% disclosure, an NRSRO must disclose historical information for every credit rating initially determined on or after June 26, 2007, in a category for which the NRSRO is registered.⁴⁰ As is the case with the 10% disclosure, the 100% disclosure must be made on the NRSRO's Internet website, and the required information must be displayed in XBRL format. Although the 100% disclosure requirement applies to all NRSROs, whether they operate on an issuer-pay or subscriber-pay model, the latter group need not disclose a rating action until 24 months after it has been taken, while the grace period for the former group is half that.

The Commission proposes to eliminate the 10% requirement, an action that DBRS wholeheartedly supports. Since its adoption in 2009, this obligation has increased NRSROs' costs while imparting little useful information to the public.

The Commission also proposes to enhance the 100% disclosure requirement and to move this directive from its current location in the NRSRO recordkeeping rule (Rule 17g-2) to Rule 17g-7, where all the non-Form NRSRO disclosures are to be consolidated. The proposed enhancement would substantially expand the population of credit ratings subject to disclosure. In addition to the current requirement to disclose the histories of all credit ratings *initially determined* on or after June 26, 2007, an NRSRO now would also have to disclose all ratings in a class for which the

³⁹ Rule 17g-2(d)(2).

⁴⁰ Rule 17g-2(d)(3). June 26, 2007 was the effective date of the 2006 Act.



NRSRO is registered that were *outstanding* as of June 26, 2007, along with the subsequent rating actions taken with respect to such ratings.

The enhancement would also significantly expand the universe of information that must be disclosed about each rating. Whereas the existing 100% disclosure rule requires four data points linked to the information that an NRSRO must keep under the recordkeeping rule,⁴¹ the amended disclosure requirement would call for the disclosure, in XBRL format, of up to nine discrete items of information.⁴²

Like the Transition/Default Matrices in Form NRSRO, Exhibit 1, the rating histories information would have to be disclosed, for free, on an easily accessible portion of the NRSRO's corporate website. However, unlike Exhibit 1, this information would not have to be provided "in writing" to a party who requests it.⁴³ The rating history for a particular obligor, security or money market instrument would have to be disclosed for at least 20 years after the NRSRO last assigns a credit rating thereto.

DBRS supports the redesignation of the 100% rating history rule and believes that the consolidation of all non-Form NRSRO disclosure obligations in amended Rule 17g-7 will make these requirements easier to understand and satisfy. However, DBRS believes that the proposed expansion of the disclosable ratings history information will impose costs on NRSROs that exceed the public benefits these changes can be expected to confer. The Commission cites no evidence of public interest in the rating histories that are available today. DBRS's tracking data show that such interest is minimal indeed. On average, only one person per month is accessing either the DBRS posted 100% or sample 10% ratings histories.⁴⁴ Yet, DBRS has incurred substantial costs to make this information available, costs which include having to pay an annual license fee to display CUSIP information on rated securities.⁴⁵

⁴¹ Rule 17g-2(a)(8) requires an NRSRO to make and retain a record showing all rating actions and the date of such actions from the initial credit rating to the current credit rating identified by the name of the rated security or obligor and, if applicable, the CUSIP of the rated security or the Central Index Key (CIK) number of the rated obligor.

⁴² Proposed Rule 17g-7(b)(2). The current grace periods applicable to issuer-pay and subscriber pay NRSROs would continue to apply under the revised rule. Rule 17g-7(b)(4).

⁴³ See Proposing Release at note 264.

⁴⁴ Since October 27, 2010, a total of 9 users (other than DBRS employees) have accessed our 100% and 10% rating sample pages, combined.

⁴⁵ As the Commission is aware, CUSIP information is protected under the copyright laws and can be used only with permission from CUSIP Global Services on behalf of the American Bankers Association.



DBRS respectfully urges the Commission to refrain from expanding the existing ratings history disclosure program until a more thorough cost-benefit analysis regarding such expansion has been conducted.

With regard to the means of displaying ratings histories, DBRS believes, for the reasons explained above,⁴⁶ that the duty to make the information available "on an easily accessible portion" of an NRSRO's website can be satisfied by either hyperlinking the histories directly to the home page, or making them available through a link from the home page to a "Regulatory Affairs" or similar section of the website. DBRS further agrees that it is not feasible to require NRSROs to produce this voluminous, frequently updated and XBRL-tagged data in any kind of written format. Nor is mandating the written production of this information justified; the only parties who are likely to refer to the information are more than capable of retrieving it from the NRSROs' websites.

As for the other questions the Commission has asked about its proposed changes to the ratings history disclosure requirements,⁴⁷ DBRS comments as follows:

- Retrofitting existing ratings histories and creating new histories for ratings outstanding as of the effective date of the 2006 Act in order to comply with these proposals would require costly systems and data collection changes. DBRS submits that the Commission has substantially underestimated the compliance costs associated with proposed Rule 17g-7(b).⁴⁸
- DBRS particularly questions the cost-effectiveness of the proposed requirement to disclose the name and CIK number of the issuer of each rated security or money market instrument. As explained above, the 100% ratings history disclosure requirement currently is tied to the NRSRO recordkeeping obligations. These obligations require the retention of only the name of the rated security and, if applicable, the security's CUSIP.⁴⁹ In order to comply with the enhanced disclosure requirement, NRSROs would be forced to locate new information for each of their outstanding ratings histories as well as for

⁴⁶ See discussion at pages 12 - 13, *supra*.

⁴⁷ Proposing Release, Request for Comment, Section II.E.2.

⁴⁸ *Id.* 329-330, 76 Fed. Reg. at 33506.

⁴⁹ Rule 17g-2(a)(8).



the "thousands, if not hundreds of thousands"⁵⁰ of new ratings histories that would have to be disclosed under proposed Rule 17g-7(b)(1)(i). DBRS does not believe that this expensive retrofit is necessary in order for interested parties to be able to search, sort and compare ratings histories across NRSROs. Thus, even if the Commission decides to adopt Rule 17g-7(b)(1)(i) as proposed, DBRS suggests that proposed subsection (b)(2)(iv)(A) be eliminated; that subsection (B) be relettered as "(A)" and changed to read, "The name of the rated security or money market instrument;" and that subsection (C) be relettered as "(B)."

○ Expanding the ratings history universe, may also force NRSROs to incur increased licensing costs to add new CUSIP data. Any such costs should be factored into the Commission's cost-benefit analysis of this proposal.

○ An important practical issue the Commission should consider in implementing any proposed enhancements to the 100% Rule is how frequently the ratings histories database needs to be updated. In explaining why converting this information to written format would be infeasible, the Commission said, "The data file containing the disclosures would need to be constantly updated by the NRSRO as new rating actions are added."⁵¹ DBRS respectfully submits that having to "constantly" update a ratings history data file -- even one in electronic form -- would impose an unwarranted burden on NRSROs. In order to avoid such a burden while protecting the interests of parties who may wish to utilize this information, DBRS urges the SEC to confirm that an NRSRO will be deemed to satisfy its duties under Rule 17g-7(b) if it updates its ratings history database on a monthly basis.

○ DBRS believes that the three proposed sub-classifications for the withdrawal of credit ratings are sufficient and need not be further specified.

○ For the reasons explained in our comments regarding proposed changes to Form NRSRO, Exhibit 1,⁵² DBRS urges the Commission to collapse the structured finance products category into three subclasses: "RMBS," "CMBS" and "Other ABS." However, if a definition of "ABCP" is maintained in Proposed Rule 17g-7(b)(2)(vi)(D)(5), this definition should be revised to include ratings for any type of note issued by an ABCP conduit.

⁵⁰ Proposing Release at 111, 76 Fed. Reg. at 33449.

⁵¹ *Id.* at note 264.

⁵² See discussion at pages 12 and 14, *supra*.



- DBRS believes that the rating history for a withdrawn credit rating should be required to be disclosed for only 10 years, not 20 years as proposed. A 10-year requirement would be consistent with the long-term Transition/Default Matrices required in Form NRSRO, Exhibit 1. Furthermore, disclosure beyond a decade would be of limited utility, and would create very unwieldy data files. In fact, even a 10-year period may be too long. DBRS urges the Commission to revisit this issue periodically, to confirm that the public benefits of long-term disclosure of withdrawn ratings outweigh the costs of such disclosure.

- DBRS believes it is neither necessary nor appropriate to maintain two separate grace periods for rating history disclosure. If the goal is to foster comparability among NRSROs, the same rules should apply to all registrants, whether they operate on an issuer-pay or subscriber-pay model. While DBRS appreciates the need to protect the commercial value of credit ratings, we believe this goal can be achieved by setting an 18-month grace period for all NRSROs under Rule 17g-7(b)(4).

Credit Rating Methodologies

The Commission proposes to adopt new Rule 17g-8(a) to implement the Dodd-Frank Act's provisions regarding credit rating methodologies.⁵³ Because the law is so prescriptive, the proposed rule, for the most part, simply tracks the statutory language. DBRS agrees that this is the most prudent approach to rulemaking in this area.

However, proposed Rule 17g-8 does add to the statute in two respects. First, the rule specifies that the "reasonable period of time" within which changes to credit rating surveillance or monitoring procedures must be applied to outstanding ratings is to be determined based on the number of ratings affected by the change, the complexity of the subject rating procedures and methodologies and the type of obligor, security or money market instrument being rated.⁵⁴ DBRS agrees that "reasonableness" in this context depends on these facts and circumstances and that mandating a specific time period could have adverse consequences.

The second area in which the Commission proposes to supplement the statutory language relates to an NRSRO's duty to inform the public when a material change is made to ratings procedures or methodologies, the reason for the change, and the

⁵³ Dodd-Frank Act § 932(a)(8), *adding* § 15E(r) to the Exchange Act.

⁵⁴ Proposed Rule 17g-8(a)(3)(ii).



likelihood that such a change will result in a change in current credit ratings, as well as the duty to inform the public when the NRSRO identifies a significant error in a procedure or methodology that may result in credit rating actions. Here, proposed Rule 17g-8 would require the NRSRO to establish, maintain, enforce and document policies and procedures reasonably designed to ensure that the required information is published on an "easily accessible" portion of the NRSRO's Internet website.

DBRS endorses this approach, but believes, for the reasons explained above,⁵⁵ that the duty to make the information available "on an easily accessible portion" of a website can be satisfied by either hyperlinking the disclosure directly to the home page, or making it available through a link from the home page to a "Regulatory Affairs" or similar section of the site.

Although not critical, DBRS believes it also would be helpful for the Commission to provide guidance on when a "material" change to or a "significant error" in a rating procedure or methodology must be publicly disclosed. As for the first term, DBRS suggests that disclosure of a procedure or methodology change is warranted if there is a substantial likelihood that a reasonable investor or other user of the credit ratings would consider the change to be important in evaluating the affected ratings. As for the second term, DBRS suggests that an error should be disclosed if there is a reasonable likelihood that correction of the error will result in a change to current credit ratings.

In addition to mandating the creation and implementation of policies and procedures relating to rating methodologies, the Commission also proposes to require NRSROs to maintain those policies and procedures in accordance with the NRSRO recordkeeping rule.⁵⁶ DBRS supports this proposal.

Form to Accompany Credit Ratings

One of the most significant changes the Dodd-Frank Act made to the NRSRO regulatory regime was to add § 15E(s) to the Exchange Act. This highly prescriptive provision directs the Commission, by rule, to require NRSROs to make extensive disclosures every time they publish a credit rating. The Commission proposes to satisfy Congress's direction by adopting new Rule 17g-7(a).⁵⁷

⁵⁵ See discussion at pages 12 - 13, *supra*.

⁵⁶ Proposed Rule 17g-2(b)(13).

⁵⁷ As it stands today, Rule 17g-7 requires NRSROs to make certain disclosures regarding asset-backed securities. The Commission proposes to fold these existing obligations into the new Rule 17g-7(a).



The Preface

The prefatory text of the rule would require an NRSRO to make the prescribed disclosures, "as applicable," whenever the NRSRO takes any kind of rating action, including placing an existing rating on credit watch or withdrawing an existing rating. In this regard, the proposed rule is broader than the statute, which ties the disclosure obligation to the publication of a credit rating, not the taking of a rating action. DBRS finds this distinction to be significant. The kinds of information required to be disclosed (e.g. assumptions underlying rating methodologies and data relied on to determine the rating) are simply not relevant unless the rating action involves the publication of a credit rating. Subjecting NRSROs to patently irrelevant requirements and making them responsible for determining what is and is not "applicable" imposes unnecessary compliance risks and burdens on the rating agencies.

Moreover, as explained above, the per-opinion level of disclosure the Dodd-Frank Act demands from NRSROs far exceeds the level of disclosure demanded from any other type of entity regulated under the federal securities laws.⁵⁸ Complying with these detailed requirements may, in some cases, make it difficult for NRSRO to release their credit ratings in a timely fashion. DBRS urges the Commission not to add to this disproportionate burden by extending the scope of Rule 17g-7(a) beyond that which the statute requires.

If, notwithstanding these arguments, the Commission decides to include within the scope of the rule actions such as placing a rating on credit watch and withdrawing a rating, DBRS asks that the rule be amended to require disclosure only of the reasons for the subject action.⁵⁹

In addition to specifying the scope of the rule, the prefatory text also would specify the way in which an NRSRO must make the required disclosures available to users of credit ratings. In this regard, the Commission proposes to require an NRSRO to publish the disclosures "in the same medium" and to make them available to "the same persons who can receive or access the credit rating that is the result of the rating action or that is the subject of the rating action." DBRS supports this part of the proposal, but asks the Commission to confirm that an NRSRO that publishes its credit ratings via an electronically disseminated press release can satisfy the

⁵⁸ See discussion at page 2, *supra*.

⁵⁹ If the action involves the withdrawal of a rating, the required disclosure should track the language of the ratings history requirement in Rule 17g-7(b)(2)(v)(G), *viz.*, that the obligor defaulted, or the security or money market instrument went into default; that the obligation subject to the credit rating was extinguished by the payment in full of all outstanding principal and interest due, in accordance with the terms of the obligation; or some other reason.



disclosure requirement by hyperlinking the disclosure form and any applicable due diligence certifications to that press release.⁶⁰

With regard to other questions the Commission has asked about the prefatory text of proposed Rule 17g-7(a),⁶¹ DBRS comments as follows:

- Because DBRS believes that 17g-7(a) should be limited to the publication of a credit rating, DBRS suggests that the third sentence of the proposed prefatory text should end after the phrase "result of the rating action," and that the words "or that is the subject of the rating action" should be deleted.
- DBRS does not believe the Commission should explicitly mandate that the disclosures required under Rule 17g-7(a) be provided no later than the time of the proposed Rule 424(h) preliminary prospectus. Assembling the required disclosures and certifications will be a laborious process, which may not be completed 5 business days before the first sale of securities. Imposing a five-business day requirement could delay the start of the offering.

The Disclosure Form

Paragraph (a)(1)(ii) of proposed Rule 17g-7 specifies the content of the disclosure form that an NRSRO would be obliged to publish with each rating action. This provision largely tracks the prescriptive language of the Dodd-Frank Act, but expands on the statute in certain respects.

While DBRS firmly believes in transparency, we also believe that in adding § 15E(s) to the Exchange Act, Congress underestimated the cost and overestimated the benefit of its action. According to the Commission's estimates, initial compliance with the disclosure form and certification requirements will cost more than \$1.5 million, and annual compliance costs for a firm of DBRS's size will exceed \$1 million.⁶² Given the number and scope of required disclosures, NRSROs will not be able to issue ratings in a timely fashion unless they standardize their responses as much as possible. Such standardization could mute the benefits derived from the disclosure. Furthermore, at

⁶⁰ See Proposing Release at note 401.

⁶¹ *Id.*, Request for Comment, Section II.G.1.

⁶² *Id.* at 328-330, 394-396, 76 Fed. Reg. at 33506, 33523-33524. These estimates include the costs of complying with both the provisions mandated by the Dodd-Frank Act and the provisions added through the exercise of the Commission's discretion. DBRS believes that the Commission has grossly underestimated both the amount of time it will take to compile a disclosure form for each rating action and the hourly rate for retaining outside professionals such as attorneys.



some point the level of detail published with a rating becomes so great that it overwhelms the recipient, who ends up reading nothing at all. DBRS urges the Commission to be mindful of these issues in assessing any expansion of the disclosure form beyond what the statute expressly requires.

With regard to the questions the Commission has asked about the disclosure form,⁶³ DBRS comments as follows:

- DBRS does not believe that Rule 17g-7(a) should require an NRSRO to present the information included in the disclosure form in any particular order.
- While DBRS supports the inclusion in the disclosure form of the subject credit rating and identity of the obligor, security or money market instrument, DBRS takes issue with the suggestion that the obligor's identity should include the obligor's legal name and "any other name" the obligor uses in its business.⁶⁴ Tracking down each business name an obligor uses could be an enormously burdensome task that confers little benefit on those who may read the form. DBRS suggests instead that NRSROs determine the clearest way to identify obligors, based on facts and circumstances.

DBRS also sees a problem with the suggestion that NRSROs can identify a rated security or money market instrument by including the applicable CUSIP. Because CUSIP information is copyright-protected, including this information in the 17g-7(a) disclosure form could increase an NRSRO's costs and impede the accessibility of the NRSRO's credit ratings.

DBRS does not see a need to expand proposed paragraph (a)(1)(ii)(A) in any way.

- DBRS agrees that disclosing the version of the procedure or methodology used to determine a credit rating could be accomplished by identifying the name of the procedure or methodology (including any number used to denote the version), the date the procedure was implemented, and an Internet URL where further information about the procedure or methodology can be obtained.
- With regard to proposed Rule 17g-7(a)(1)(ii)(F), DBRS agrees that an NRSRO should disclose whether and to what extent it used third-party due diligence

⁶³ *Id.*, Request for Comment, Section II.G.2. and 3.

⁶⁴ *Id.* at 149, 76 Fed. Reg. at 33459.



services. However, DBRS does not agree that this provision requires a description of how the NRSRO used any certifications received from providers of such services under Exchange Act § 15E(s)(4)(B).⁶⁵ Proposed Rule 17g-7(a)(2) requires the certification to be appended to the disclosure form; its use, therefore, is self-evident.

DBRS asks the Commission to confirm that an NRSRO would not be required to repeat in a disclosure form information already contained in an attached certification. As discussed below, the form on which such certification must be provided already requires a description of the information the due diligence service reviewed as well as a summary of findings and conclusions resulting from that review.⁶⁶ There is no need for this information to be disclosed twice.

- DBRS's views on the proposed look-back conflict disclosures included in proposed Rule 17g-7(a)(1)(ii)(J)(3) are discussed elsewhere in this letter.⁶⁷
- DBRS suggests that the Commission amend paragraph (a)(1)(ii)(K)(1) to read: "Any factors that are reasonably likely to lead to a change in the credit rating."
- DBRS urges the Commission to confirm that an NRSRO need not repeat information that may be required by more than one paragraph of Rule 17g-7(a)(1) (e.g., paragraphs (a)(1)(ii)(K)(1) and (a)(1)(ii)(M)). Consolidating duplicative disclosures would benefit both the NRSRO and the disclosure form's recipient.

The Attestation

The Commission proposes to require the attestation described in Exchange Act § 15E(q) (the provision that relates to ratings performance) to accompany the rating disclosure form mandated under Rule 17g-7.⁶⁸ DBRS endorses this arrangement, as well as the text of the proposed attestation. DBRS asks the Commission to permit each NRSRO to determine who within the rating agency should be responsible for making the proposed attestation.

⁶⁵ *Id.* at 155, 76 Fed. Reg. at 33460-33461.

⁶⁶ See discussion at 28-30, *infra*, of proposed Rule 17g-10, and proposed Form ABS Due Diligence-15E.

⁶⁷ See discussion at pages 8 - 9 *supra*.

⁶⁸ Rule 17g-7(a)(1)(iii).



Third-Party Due Diligence for Asset-Backed Securities

The Dodd-Frank Act devotes special attention to disclosure of the use of third-party due diligence services in the case of asset-backed securities.⁶⁹ First, the issuer or underwriter of an asset-backed security must publish the findings and conclusions of any such due diligence report the issuer or underwriter obtains. Second, if due diligence services are employed by an issuer, underwriter or NRSRO, the service provider must supply any NRSRO that rates the subject securities with a written certification, whose form and content are determined by the Commission. Finally, any NRSRO receiving such a certification must disclose it in a manner that enables the public to determine the adequacy and level of due diligence services provided. Read literally, these sections of the statute, coupled with § 15E(s)(3)(A)(v) relating to the ratings disclosure form,⁷⁰ require multiple disclosures of the same information.

These provisions also raise practical concerns. For example, the provisions assume Commission's authority to regulate the conduct of all issuers and underwriters of Exchange Act-ABS, as well as the conduct of all parties who provide due diligence services in connection with such securities. However, neither non-U.S. issuers and underwriters of non-U.S. offerings nor non-U.S. due diligence service providers are subject to SEC jurisdiction. DBRS urges the Commission to be mindful of this fact and limit the extraterritorial application of the due diligence disclosure regulations so that they are consistent with the scope of the agency's jurisdiction.

The Commission proposes to implement § 15E(s)(4) by adopting new Rule 15Ga-2 and amendments to Form ABS-15G for issuers and underwriters; new Rule 17g-10 and Form ABS Due Diligence-15E for third-party due diligence service providers; and Rule 17g-7(a)(2) for NRSROs. For purposes of these rules, the term "due diligence services" would mean a review of the assets underlying an Exchange Act-ABS for the purpose of making findings regarding: (i) the quality or integrity of the information about the assets provided by the assets' securitizer or originator; (ii) whether the origination of the assets conformed to or deviated from, stated underwriting or credit extension criteria or other requirements; (iii) the value of collateral securing such assets; (iv) whether the originator of the assets complied with applicable laws and

⁶⁹ Dodd-Frank Act, § 932(a)(8), adding § 15E(s)(4) to the Exchange Act. As used in this section, "asset-backed securities" means the securities defined in § 3(a)(77) of the Exchange Act ("Exchange Act - ABS").

⁷⁰ This section requires an NRSRO to explain in its rating disclosure form "whether and to what extent third-party due diligence services have been used by the [NRSRO], 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." As discussed in the previous section of this letter, the Commission proposes to implement this duty by adopting Rule 17g-7(a)(1)(ii)(F).



rules; or (v) any other factor or characteristic of the assets that would be material to the likelihood that the issuer of the asset-backed security will pay interest and principal according to its terms and conditions.⁷¹ DBRS supports this proposed definition.

Disclosure by Issuers and Underwriters

As repropoed,⁷² Rule 15Ga-2 would require the issuer or underwriter of an offering of Exchange-Act ABS that is to be rated by an NRSRO to furnish Form ABS-15G five business days prior to the first sale in the offering, if the issuer or underwriter obtained a third-party due diligence report regarding the security. The Form, which would contain the due diligence report's findings and conclusions, would be submitted to the Commission through the EDGAR system for both registered and unregistered offerings.

An issuer or underwriter would be relieved of the duty to furnish Form ABS-15G if that party obtains a reasonably reliable representation from an NRSRO rating the security that the NRSRO will publicly disclose the findings and conclusions of the due diligence report, pursuant to Rule 17g-7(a)(1)(ii)(F), five business days before the first sale in the offering. If, notwithstanding making such a representation, the NRSRO fails to meet the five-day deadline, the issuer or underwriter would be obliged to furnish Form ABS-15G two business days prior to the first sale in the offering.

DBRS applauds the Commission's efforts to avoid redundant disclosures, but suggests that the practical utility of allowing the issuer to satisfy its due diligence disclosure obligation by relying on an NRSRO's ratings disclosure form remains to be seen. The ratings disclosure form requires so much information that the NRSRO may not be able to complete it five days before the first sale in an offering.

DBRS also notes some confusion as to how the co-ordinated disclosure would work in practice. For example, while the text of the proposed rule relieves an issuer or underwriter of the duty to furnish Form ABS-15G if such party receives a representation from "a" nationally recognized statistical rating organization, the Proposing Release describes this relief as being conditioned on the issuer's or underwriter's receiving such representation from "each NRSRO engaged to produce a

⁷¹ Proposed Rule 17g-10(c)(1). See also Proposed Rule 15Ga-2(c).

⁷² The Commission originally proposed to adopt Rule 15Ga-2 as part of a rulemaking concerning issuer review of assets, but decided to consider it instead as part of a comprehensive implementation of §15E(s)(4). See *Issuer Review of Assets in Offerings of Asset-Backed Securities*, SEC Release No. 33-9176 (January 20, 2011), 76 Fed. Reg. 4231 (January 25, 2011).



credit rating for the Exchange Act-ABS".⁷³ DBRS believes that the wording of the proposed rule is the preferable approach; so long as a representation is received from at least one hired NRSRO, the issuer's or underwriter's duty to disclose the findings and conclusions of the due diligence report should be expunged.

Should the Commission choose to condition relief on the issuer's or underwriter's receipt of a representation from *each* hired NRSRO, then the contingent duty to furnish Form ABS-15G pursuant to proposed Rule 15Ga-2(b) presumably would arise if any hired NRSRO fails to make a promised disclosure five days before the offering. This, too, seems to be unnecessary. The purpose of this rule is to require some public disclosure of a due diligence report five days before the offering, not necessarily to require advance disclosure by every NRSRO who is rating the security. Such a goal might never be attained. Even if sufficiently advanced disclosure is made by each hired NRSRO to activate the Rule 15Ga-2(a) exemption, there still may be non-hired NRSROs who rate the security, but make their 17g-7(a) disclosure after the five-day deadline.

In addition to clarifying the scope of the exemption under Rule 15Ga-2(a), DBRS also suggests that the Commission clarify the conditions under which an issuer or underwriter would have to make disclosure pursuant to 15Ga-2(b). As drafted, the proposed rule would obligate the issuer or underwriter to furnish Form ABS-15G two business days prior to the first sale in the offering if an NRSRO failed to make its promised disclosure five business days prior to that time. It is unclear what happens if the NRSRO makes its disclosure three or four days prior to the sale. Duplicative disclosure is certainly not necessary. DBRS suggests, therefore, that the proposed rule be amended to make clear that the issuer must furnish Form ABS-15G two business days prior to first sale only if the NRSRO has failed to make its own disclosure by that time.⁷⁴ The issuer or underwriter should not have to wait another five business days after the disclosure is made to proceed with the offering.

With regard to other matters concerning the due diligence disclosure obligations of issuers and underwriters,⁷⁵ DBRS comments as follows:

⁷³ Proposing Release at 182,184, 76 Fed. Reg. at 33467-33468.

⁷⁴ This could be accomplished by adding the following language at the end of proposed Rule 15Ga-2(b): "Notwithstanding the preceding sentence, the issuer or underwriter need not furnish Form ABS-15G two business days prior to the first sale in the offering, if the nationally recognized statistical rating organization makes the required disclosure by that time."

⁷⁵ See, Proposing Release, Request for Comment, Section II.H.1.



○ DBRS agrees that Rule 15Ga-2 should apply only if the subject Exchange Act-ABS is to be rated by an NRSRO. The placement of the issuer/underwriter disclosure obligation in § 15E(s) of the Exchange Act indicates Congress's intent to tie this duty to the review of information in connection with the determination of credit ratings.

○ For the same reason, DBRS believes that the scope of the due diligence disclosure obligation should be aligned with the scope of the distribution of the credit rating. In the case of registered offerings, NRSROs hired by issuers and underwriters generally distribute their ratings to the public for free. It makes sense, therefore, to require the public distribution of due diligence information about registered offerings either through an EDGAR filing of Form ABS-15G or through an NRSRO's public disclosure under Rule 17g-7(a), should the NRSRO agree to publish its form sufficiently in advance of the first sale of the rated securities.⁷⁶

A different answer pertains to unregistered offerings, where ratings are distributed only to potential investors in the offering. In such cases, DBRS believes it is both unnecessary and inadvisable to require issuers, underwriters or NRSROs to disclose the findings and conclusions of due diligence reports to the general public. Indeed, promulgating such a requirement would effectively eliminate the 15Ga-2(a) exemption for private offerings, because Rule 17g-7(a) requires NRSROs to make their ratings disclosure forms available "to the same persons who can receive or access the credit rating that is the result of the rating action."

Where a private offering is concerned, DBRS suggests that the Commission require the issuer or underwriter to deliver Form ABS-15G to prospective investors in the same format as the one in which the offering materials are supplied. An NRSRO's delivery of the due diligence disclosure pursuant to 17a-7(a)(1) could then continue to form the basis for an exemption under Rule 15Ga-2(a).

○ DBRS urges the Commission to amend proposed Rule 15Ga-2 to confirm that the rule does not apply where (i) the issuer or underwriter is a non-U.S. person; and (ii) transactions in the offering of the subject Exchange Act-ABS occur only outside the U.S.

○ DBRS agrees that Form ABS-15G should be deemed "furnished" rather than "filed" for purposes of Exchange Act § 18, unless the issuer specifically states

⁷⁶ See *Id.* at note 534.



that the form is being "filed" or incorporates it by reference into a filing under the Exchange Act or the Securities Act of 1933 ("Securities Act"). However, DBRS notes that the proposed Form itself is inconsistent in its terminology; in some places it uses the word "filed" and in others, the word "furnish."⁷⁷

- DBRS supports the Commission's proposal to allow municipal securitizers of Exchange Act-ABS or underwriters in such offerings to provide the information required by Form ABS-15G on the Electronic Municipal Market Access System operated by the Municipal Securities Rulemaking Board.

Due Diligence Service Provider Certifications

The Commission proposes to implement § 15E(s)(4)(B) and (C) by adopting new Rule 17g-10, which would oblige third-party due diligence service providers to supply written certifications to NRSROs by means of Form ABS Due Diligence-15E. The Commission seeks comment on the best way to ensure that these certifications are available to each NRSRO that produces a rating to which such services relate, since the due diligence service provider would be unlikely to know if an NRSRO plans to produce a rating on an unsolicited basis.⁷⁸

DBRS believes that the most efficient and cost-effective approach is to utilize existing regulations as much as possible. As it stands today, issuers and underwriters who hire an NRSRO to rate a structured finance product such as an Exchange Act-ABS are required to make available to other NRSROs all information the issuer or underwriter "contracts with a third party to provide to" the hired NRSRO.⁷⁹ Thus, if the issuer or underwriter contracts with a third-party service provider to supply a hired NRSRO with a due diligence report, a copy of that report would already be made available to other NRSROs pursuant to Rule 17g-5(a)(3). By adding a note to paragraph (a)(3)(iii)(C), the Commission could confirm that where an issuer or underwriter contracts for the delivery of a due diligence report to the hired NRSRO, the posted information must include the related Rule 17g-10 certification.

Compliance with § 15E(s)(4)(B) is more challenging when the third-party due diligence service provider is engaged by an NRSRO rather than by the issuer or underwriter. In this case, DBRS believes that a service provider should be deemed to comply with

⁷⁷ See *Id.* at 477, 76 Fed. Reg. at 33544.

⁷⁸ *Id.* at 175, 76 Fed. Reg. at 33466.

⁷⁹ Rule 17g-5(a)(3)(iii)(C).



Rule 17g-10 if, in addition to supplying Form ABS Due Diligence-15E to the NRSRO that engaged it, it promptly sends the certification to any other NRSRO it knows or reasonably should know is rating the affected security. Mandating the creation of a new centralized database or any other costly alternative is not warranted under the circumstances.⁸⁰

With regard to other questions the Commission has posed regarding certifications by due diligence service providers,⁸¹ DBRS comments as follows:

- DBRS asks the Commission to confirm that proposed Rule 17g-10 does not apply to third-party due diligence service providers who do not have a place of business in the United States.
- DBRS believes that the term "due diligence services" should apply to Exchange Act-ABS only and not more broadly to structured finance products.
- DBRS has no objection to the definitions of "issuer," "originator" and "securitizer" in proposed Rule 17g-10(c).
- In order to enable NRSROs to publish ratings and all the attendant disclosure in a timely fashion, DBRS believes that due diligence certifications should be provided "promptly," or within one business day after the service provider completes its review.
- DBRS believes that where a third-party due diligence service is hired with respect to an initial issuance of securities, it should not be obliged to provide the certification at a 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. Once an initial rating has been issued, the due diligence certification will be publicly available through the NRSRO issuing the rating, pursuant to Rule 17g-7(a)(2).

⁸⁰ Although Rule 17g-5(a)(3) has been in effect for more than a year, there does not appear to be significant NRSRO interest in issuing unsolicited credit ratings for structured finance products. An NRSRO who accessed information under this rule 10 or more times during the most recent calendar year must certify to the Commission the number of deals it looked at and the number of ratings it determined as a result of such access. Rule 17g-5(e). Unless and until the Commission confirms that this costly rule is conferring a sufficient benefit on the market place, there is no need to impose any more costs to deliver information to non-hired NRSROs.

⁸¹ Proposing Release, Request for Comment, Sections II.H., H.2. and H.3.



- Rule 17g-5(a)(3) requires issuers and underwriters to post information on their password-protected websites "at the same time" such information is provided to the hired NRSRO. Using the existing rule as a delivery mechanism for the Rule 17g-10 certification where the issuer or underwriter engages the due diligence service provider will ensure that certifications are supplied to all affected NRSROs at roughly the same time. Where the NRSRO hires the due diligence service, the certification should be distributed to other NRSROs promptly after it is given to the hiring NRSRO. There is no need to make the hiring NRSRO wait for the service provider to identify other NRSROs who are producing a rating to which the services relate.
- With regard to proposed Form ABS Due Diligence-15E, DBRS asks the Commission to limit the scope of Item 3 to criteria published either by an NRSRO that has engaged the due diligence service provider, or an NRSRO on whose behalf an issuer or underwriter has engaged such provider. Requiring due diligence service providers to analyze and report on the rating procedures and methodologies of other NRSROs could delay the issuance of the certification without imparting any useful information to the public.
- DBRS does not believe that proposed Form ABS Due Diligence-15E should be more prescriptive. If the steps taken in a third-party due diligence review were designed to conform to criteria established by an NRSRO, an SEC mandate regarding those steps could violate § 15E(c)(2) of the Exchange Act.⁸²
- DBRS supports Items 4 and 5 of Form ABS Due Diligence-15E, as proposed.
- With regard to the Certification in proposed Form ABS Due Diligence-15E, DBRS suggests that the final clause be changed from "are accurate in all significant respects" to "are materially accurate." "Materiality" is a more commonly used concept under the federal securities laws than is "significance."

NRSRO Publication of Due Diligence Certifications

The Commission proposes to implement § 15E(s)(4)(D) by requiring an NRSRO to publish a third-party due diligence service provider certification whenever it takes a rating action in a class of credit ratings for which it is registered.⁸³ The certification would accompany the disclosure form required by Rule 17g-7(a)(1).

⁸² See note 19, *supra*.

⁸³ Proposed Rule 17g-7(a)(2) and the prefatory text to the rule.



DBRS believes this proposal is overly broad. Instead of including the certification with every credit rating and rating-related action throughout the life of a rated Exchange Act-ABS, DBRS submits that a certification should be published only in connection with: (i) a preliminary rating, if the NRSRO utilized the due diligence report in determining such rating; (ii) the initial rating; and (iii) any subsequent rating action to which the due diligence report relates. A due diligence report prepared in connection with an initial issuance of securities loses its relevance at some point in time. Depending on facts and circumstances, continuing to publish a certification relating to such a report could mislead, rather than inform, investors and other users of the credit rating.

Furthermore, where a third-party certification is published along with a credit rating, DBRS sees no need for the NRSRO to repeat the due diligence service's findings and conclusions, as would be required under proposed Rule 17g-7(a)(1)(ii)(F).⁸⁴ Providing redundant information does not benefit the public, and the best party to articulate the findings and conclusions from a due diligence review is the party who made them. In such a situation, therefore, DBRS submits that the NRSRO should explain, in its ratings disclosure form, whether and to what extent it used third-party due diligence services, and then refer the reader to the accompanying certification for a description of the information reviewed and the findings and conclusions reached. In addition to satisfying the NRSRO's disclosure requirements under Rule 17g-7(a)(1), an incorporation of the third-party certification in this fashion should also satisfy the disclosure obligations of an issuer or underwriter pursuant to proposed Rule 15Ga-2, assuming that that rule's five-day deadline can be met.

Electronic Filing of Registration Forms and Annual Reports

The Commission proposes to require NRSROs to furnish or file their annual certifications, registration updates, registration withdrawals and annual 17g-3 reports electronically through the Commission's EDGAR system. The Commission also proposes to make the temporary hardship exemption for EDGAR filers unavailable for NRSRO submissions.⁸⁵ In advancing these proposals, the Commission opines that forcing registered credit rating agencies⁸⁶ to submit their NRSRO Forms through

⁸⁴ See Proposing Release at 210, 76 Fed. Reg. at 33475.

⁸⁵ Rule 201 of Regulation S-T provides a temporary hardship exemption for electronic filers who experience unanticipated technical difficulties that prevent the timely preparation and submission of an EDGAR filing.

⁸⁶ The EDGAR filing requirement would not arise until after a rating agency becomes registered as an NRSRO. Initial applications, amendments thereto and withdrawals thereof would continue to be filed on paper.



EDGAR will benefit investors and other users of credit ratings by making this information "more easily available and searchable" than it otherwise would be.⁸⁷ In this regard the Commission says that submissions are more valuable if they are available in "electronic format," and that adding NRSRO Forms to the EDGAR data base "would provide a more complete picture for the public."⁸⁸ The Commission sums up these benefits by explaining that, "An investor or other user of credit ratings would be able to find and review a Form NRSRO on any computer with an Internet connection by accessing EDGAR data on the Commission's Internet website or through a third party."⁸⁹ Although none of these alleged benefits would exist where non-public 17g-3 reports are concerned, the Commission nonetheless proposes mandating the use of EDGAR for such submissions, in order to facilitate the SEC staff's access to them.

The Commission believes that its proposal would also benefit NRSROs, by relieving them of the "uncertainties, delay, and expense related to the manual delivery of paper submissions," as well as the duty "to submit multiple paper copies" of NRSRO forms and annual reports.⁹⁰ The Commission does not identify any benefits to be derived from denying NRSROs the temporary electronic filing hardship exemption.

On the other side of the equation, the Commission opines that the costs associated with EDGAR filing would be negligible. In this regard, the Commission estimates that an NRSRO would spend an average of only 4.75 hours familiarizing itself with the EDGAR filing system.⁹¹ The Commission also expresses the belief that the cost of using EDGAR to submit the required documents "once compiled" would be roughly the same as the cost to submit the documents by mail or messenger.⁹² Absent from this analysis is an estimate of the expense an NRSRO would incur in compiling Form NRSRO, its Exhibits and the annual reports into an EDGAR-acceptable format. As explained below, this expense would be significant.

⁸⁷ Proposing Release at 239, 76 Fed. Reg. at 33482.

⁸⁸ *Id.*

⁸⁹ *Id.* at 240, 76 Fed. Reg. at 33482.

⁹⁰ *Id.* DBRS is puzzled by the reference to the duty to submit "multiple paper copies" of NRSRO registration materials. Although the Commission proposes, as part of this rulemaking, to add a requirement that a second copy of an initial application, amendment thereto or withdrawal thereof be filed, there is currently no need for an NRSRO to submit more than one paper copy of Form NRSRO, its Exhibits or 17g-3 reports.

⁹¹ *Proposing Release* at 311, 76 Fed. Reg. at 33501.

⁹² *Id.*



DBRS respectfully submits that the Commission has vastly overstated the benefits and understated the cost of its electronic submission proposal.

First, the anticipated benefits to investors or other users of credit ratings of having Form NRSRO and Exhibits 1 - 9 available through EDGAR are illusory. This information is, and since the inception of the NRSRO regulatory regime in 2007, has been available "in electronic format," accessible through "any computer with an Internet connection." There is no evidence that a person who wants to read an NRSRO registration form today has any difficulty doing so. Furthermore, as part of this rulemaking, the Commission proposes to amend Rule 17g-1(i) to require NRSROs to make their NRSRO Forms and Exhibits "publicly and freely available on an easily accessible portion" of their websites. The Commission acknowledges, therefore, that the information it proposes to add to the EDGAR database will already be readily available to the public through other channels.

DBRS is not persuaded by the argument that providing public access to NRSRO registration materials immediately through EDGAR, rather than within 10 days of filing, as is currently the case, is meaningful in any way. This information is not time-sensitive, and there is no evidence that any investor or other user of credit ratings has been disadvantaged by having to wait a few days until an updated form and exhibits are posted on an NRSRO's website.

Nor is DBRS convinced that maintaining a central database of this information is either necessary or particularly useful. Because there are only 10 NRSROs, each of whom is identified on the NRSRO page of the SEC's website, it is relatively easy for interested parties to retrieve desired information from the NRSROs' own websites.⁹³ Furthermore, NRSRO websites contain a plethora of other useful information, such as credit rating histories, rating methodologies and, once amended Rule 17g-7 takes effect, extensive disclosure forms for each credit rating. That being the case, it is far more likely that the public will look to the NRSROs' websites for registration materials than it is that they will access this information through EDGAR. Of course, filing 17g-3 reports through EDGAR confers no public benefit at all, since these filings are not released to the public.

As for EDGAR's presumed benefits to NRSROs, DBRS submits that any reduction in the "uncertainties, delay, and expense related to the manual delivery of paper submissions" will be more than offset by the significant expense of preparing these

⁹³ By contrast, centralized databases are very useful in locating information about the thousands of registered investment advisers, broker-dealers, investment companies or public companies, whose identities and registration documents may not otherwise be publicly available.



documents in an EDGAR-acceptable format, and the "uncertainties" and "delay" that will result if a filing is rejected because the prescribed format has not been followed.

With regard to the cost of this proposal, DBRS is at a loss to understand how the Commission arrived at its estimate, which accounts for only a small fraction of the expected cost of compliance. Before making its first filing on EDGAR, an NRSRO will have to familiarize itself with the roughly 35 rules of Regulation S-T, as well as the first two volumes of the latest version of the EDGAR Filer Manual (which currently total more than 600 pages) and related EDGAR technical guidance.

After filing an application for access to the system and completing all the necessary start-up tasks, the NRSRO then will have to reformat its entire set of registration materials to create documents that will be accepted by the system. This is likely to be a very expensive process, since EDGAR's technical formatting requirements are exceedingly specific.⁹⁴ For example, because EDGAR restricts the use of hyperlinks, NRSROs like DBRS, who currently link portions of their Form NRSRO Exhibits to other documents on their websites, will have to restructure access to the linked documents.

Failure to comply with EDGAR's excruciatingly detailed specifications causes a filing to be rejected, leading to further expense and delay. Because the Commission proposes to deny NRSROs Regulation S-T's temporary hardship exemption, companies experiencing technical difficulties could also encounter regulatory problems, if an annual certification or financial report is not filed by its due date. Other costs and uncertainties derive from reliability issues with the system or related applications.⁹⁵

Also missing from the Commission's cost-benefit analysis of this proposal is any discussion of the ongoing expenses an NRSRO would incur in submitting registration materials and annual reports through EDGAR. The EDGAR Filer Manual and related

⁹⁴ The Commission asks whether these requirements should be made even more specific and mandate submission of NRSRO documents in XBRL format. DBRS believes that such a requirement would substantially increase an NRSRO's costs while conferring no benefit on the public. Making these materials available in PDF format on the NRSROs' websites is a much more effective way to deliver this information to investors and other credit rating users. Likewise, there is no reason to put NRSROs to the expense of translating their 17g-3 reports into XBRL format. There are so few NRSROs that the SEC staff should be able to review the submitted information effectively in standard format.

⁹⁵ We note that the EDGAR portion of the SEC's website currently identifies a number of "Known Bugs" in the new EDGARLink Online Application: <http://www.sec.gov/info/edgar/ednews/elo-known-bugs.htm>, (last accessed, Aug. 2, 2011).



information are updated frequently; NRSROs would be obliged to monitor the EDGAR website constantly for changes, to ensure that their filings are compliant with the latest technical specifications.⁹⁶ Moreover, because NRSROs are likely to employ a more user-friendly PDF format for the registration materials they post on their websites, they will incur the cost of producing two sets of these documents in two different electronic formats on an ongoing basis.

Taken as a whole, these costs add up to many multiples of the costs the Commission has estimated and far outstrip any benefits EDGAR filing of NRSRO registration materials could possibly provide. DBRS submits, therefore, that the Commission has failed adequately to assess the economic effects of the proposed amendments to Rule 17g-1(e), (f) and (g) and related Form NRSRO instructions and Regulation S-T amendments, and that all of these proposals should be withdrawn.

As far as filing 17g-3 reports through EDGAR is concerned, DBRS is at a complete loss to understand the reason for this proposal. The Commission expresses its intent that the EDGAR Filer Manual and EDGARLink software would provide for a separate electronic submission type to apply to the annual reports, so that they “would be submitted through the EDGAR system on a confidential basis and would not be made available to the public to the extent permitted by law.”⁹⁷ However, the Commission also acknowledges that requests for confidential treatment of these documents must be made in accordance with Rule 101 of Regulation S-T.⁹⁸ This rule requires requests for confidential treatment “and the information with respect to which confidential treatment is requested” to be submitted in paper form **only**. That being the case, subjecting NRSRO annual reports to the EDGAR filing system confers no benefits whatsoever. DBRS strongly urges the Commission either to delete proposed Rule 17g-3(d), or to amend it as suggested in the next paragraph.

Although using EDGAR for NRSRO filings is not a cost-effective idea, DBRS appreciates the SEC staff's desire to have access to these materials in electronic format. In order to meet this need today, NRSROs typically deliver copies of their registration documents and 17g-3 reports to the staff via e-mail in addition to filing these documents with the Commission on paper. Because paper filing confers no special benefit and because e-mailing PDF copies of regulatory documents is so easy and inexpensive, DBRS suggests that Instruction A.8 of Form NRSRO and proposed Rule 17g-3(d) be modified to require that all submissions of Form NRSRO and related

⁹⁶ In fact, a new version of Volume II of the Manual was posted on the SEC's website while the EDGAR section of these comments was being drafted.

⁹⁷ Proposing Release at 242, 76 Fed. Reg. at 33483.

⁹⁸ *Id.* at 241, 76 Fed. Reg. at 33483.



Exhibits, as well as all reports required under Rule 17g-3, be transmitted via electronic mail to a designated SEC address. In order to safeguard NRSROs' confidential information, the annual reports and Exhibits 10-13 of Form NRSRO could be encrypted before transmission.⁹⁹ This submission mechanism would satisfy the staff's needs without imposing unnecessary burdens on the NRSROs.

Other Matters

*Conflicts of Interest Relating to Sales and Marketing*¹⁰⁰

○ DBRS generally supports the Commission's proposal to amend the existing NRSRO conflict of interest rule to prohibit an NRSRO's sales and marketing considerations from influencing the organization's production of credit ratings.¹⁰¹ However, if the new provision is adopted, it should replace, not supplement, current Rule 17g-5(c)(6). This latter provision already forbids a person who participates in determining credit ratings or developing or approving rating procedures and methodologies to also negotiate, discuss or arrange the fee paid for a rating. This prohibition would be subsumed in the broader language of proposed 17g-5(c)(8), which prohibits ratings personnel from participating in "sales or marketing" of an NRSRO's products and services. In addition to making this change, the reference to "paragraph (c)(8)" in proposed paragraph (f) should be changed to "paragraph (c)(6)."

○ DBRS further suggests that the phrase "or a product or service of a person associated with the nationally recognized statistical rating organization" in proposed Rule 17g-5(c)(8) (to be renumbered as (c)(6)) be limited to products or services of the NRSRO's affiliated entities. Applying this phrase to natural persons could preclude an individual from participating in the credit rating process if he or she operates a completely independent business (such as a photography studio) on the side.

○ DBRS also asks the Commission to issue guidance on what it means to "participate in" sales or marketing activities on the one hand, and determining credit ratings or developing or approving rating procedures or methodologies, on the other. As a practical matter, the issuer of a rated security may agree to have only one meeting with an NRSRO, which forces the NRSRO to have both

⁹⁹ We understand that parties may communicate securely with the Commission and its staff by using the SEC's E-Mail Encryption Solution or, for larger files, the Accellion secure file transfer tool.

¹⁰⁰ See Proposing Release, Request for Comment, Section II.B.

¹⁰¹ Proposed Rule 17g-5(c)(8).



analysts and business development staff present at the same time. DBRS submits that in such a case, an NRSRO should not be found to violate Rule 17g-5(c)(8) (to be renumbered as (c)(6)) if the business development staff attend the analytical part of the meeting, after which the analysts leave before any commercial matters are discussed.

○ With regard to proposed Rule 17g-5(f), DBRS notes that the terms "conditionally" and "on specified terms and conditions" are redundant; one of them should be eliminated. Otherwise, DBRS does not object to this proposal. DBRS believes that any exemption under this section should depend on the particular facts and circumstances of the NRSRO in question.

*Fines and Penalties*¹⁰²

○ DBRS agrees that the Exchange Act already authorizes the imposition of a range of fines and penalties on NRSROs; there is nothing to be gained from additional rulemaking in this area. In addition, DBRS has no objection to proposed new instruction A.10 to Form NRSRO, which would notify applicants and registrants of the range of sanctions that may be imposed for violations of the securities laws.

*Standards of Analyst Training, Experience and Competence*¹⁰³

○ DBRS endorses the approach taken by proposed Rule 17g-9 to permit NRSROs to design analyst training, experience and competence standards to best fit their needs. Rating agencies come in many shapes and sizes and they determine credit ratings in many different ways. Imposing prescriptive analyst standards on such a diverse group would diminish the value of the rule.

○ DBRS suggests that the words "and subclasses" be deleted from proposed Rule 17g-9(a). NRSROs are registered only for various credit rating classes; there is no subclass registration.

○ DBRS believes that the factors set forth in proposed Rule 17g-9(b) sufficiently capture the general issues an NRSRO should consider in designing its analyst training program.

¹⁰² Proposing Release, Request for Comment, Section II.D.

¹⁰³ *Id.*, Request for Comment, Section II.I.



- DBRS agrees that the frequency and manner of analyst testing is best left to the discretion of the NRSROs.

- DBRS further believes that developing a standardized testing program is not feasible at this time. In addition to the differences among NRSROs, different skills may be necessary within an NRSRO, depending on the type of entity or instrument an analyst rates. Appropriate testing could include existing exam and continuing education programs for Chartered Financial Analysts, Chartered Market Technicians, actuaries or accountants, as well as customized testing on an NRSRO's proprietary rating methodologies or models.

- While DBRS does not object to proposed Rule 17g-9(c)(2), we believe that obligating NRSROs to require that at least one individual with at least three years experience in performing credit analysis participate in the determination of credit ratings sets such a low bar that it is almost meaningless.

- DBRS does not object to requiring NRSROs to retain records of their analyst training, experience and competence standards pursuant to proposed new paragraph (b)(15) of Rule 17g-2.

*Universal Rating Symbols*¹⁰⁴

The Commission proposes to implement § 938 of the Dodd-Frank Act by adopting proposed new Rule 17g-8(b). The proposed rule largely tracks the explicit language of the statute, and is generally consistent with what DBRS does today. DBRS supports this proposed rule, as well as the related recordkeeping duty in proposed Rule 17g-2(b)(14).

*Annual Report of Designated Compliance Officer*¹⁰⁵

- DBRS does not object to the proposed addition of subsection (a)(8) to Rule 17g-3, to include the compliance report as one of the annual "financial" reports an NRSRO is required to file with the Commission.

- DBRS sees no need to add a duplicate certification to the compliance report. The certification required by Exchange Act § 15E(j)(5)(A)(ii) is sufficient.

¹⁰⁴ *Id.*, Request for Comment, Section II.J.

¹⁰⁵ *Id.*, Request for Comment, Section II.K.



*Miscellaneous Changes to Form NRSRO*¹⁰⁶

○ DBRS supports the proposed change to the definition of "NRSRO" in Instruction F.4 to Form NRSRO, and the proposed deletion of the phrase "or mortgaged-backed" from the identification of structured finance products in various NRSRO rules.

○ DBRS supports the proposal to clarify that the number of "credit ratings" to be reported in Items 6 and 7 of Form NRSRO means the number of obligors, securities and money market instruments rated. DBRS also supports the proposed amendment to Instruction H regarding: (i) the separate counting of each rated security or money market instrument that is uniquely identified or has distinct maturity or credit enhancement features; (ii) the prohibition on including an obligor, security or money market instrument in more than one category; and (iii) the inclusion in the ratings category for issuers of asset-backed securities any rated security or money market instrument issued by an asset pool or as part of an asset-backed securities transaction.

Nevertheless, DBRS notes that to the extent these changes cause an NRSRO to alter the way it tracks ratings data, compliance with the changes will impose on the NRSRO an expense that is not required by the Dodd-Frank Act.

○ With regard to the Commission's request for comment on the appropriate classification of specific types of instruments, DBRS responds as follows:

- Tax-exempt housing bonds should be classified in the category for issuers of government, municipal or foreign government securities.
- Project finance issuance should be classified either in the category for issuers of government, municipal and foreign government securities, or in the category for corporate issuers, depending on the type of entity issuing the securities.
- Supra-national issuers should be classified in the category for issuers of government, municipal or foreign government securities.
- Covered bonds should be classified in the category for financial institutions, brokers and dealers, because these those are the institutions that fund and issue them.

¹⁰⁶ *Id.*, Request for Comment, Sections II.M.2, M.3 and M.4.



- Municipal structured finance issuers should be classified in the government, municipal or foreign government category.

- If a municipality issues securities on behalf of a for-profit health care company (e.g., hospital, assisted living facility, nursing home), the securities should be classified as government, municipal or foreign government securities, because a government entity is responsible for the deal.

- Securitizations of health care receivables and insurance-linked securities are both typically classified in the ABS category.

- DBRS supports the proposed clarifications with respect to Exhibits 8 and 10-13 of Form NRSRO.

*Implementation Schedule*¹⁰⁷

Compliance with the new rules and rule amendments mandated by the Dodd-Frank Act will require NRSROs to make substantial changes to their operational and technical systems and to adopt extensive new policies, procedures and processes. All of this must, of course, be accomplished without distracting NRSROs from their primary mission, which is to produce timely and accurate credit ratings. In order for them to meet these challenges, it is critical that NRSROs have sufficient time to implement the proposed regulatory changes.

- DBRS submits that the minimum time necessary to achieve compliance with the credit rating disclosure requirements of Rule 17g-7(a) and the enhanced ratings history requirements of Rule 17g-7(b) will be at least 270 days after the date those rules are published in the Federal Register.

- Compliance with the other proposed rules and rule changes should not be required until 180 days after publication in the Federal Register.

- DBRS does not favor the creation of a complicated implementation schedule for these rules; the rules themselves are complicated enough.

¹⁰⁷ *Id.*, Request for Comment, Section III.

Ms. Elizabeth M. Murphy
August 8, 2011
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CONCLUSION

DBRS appreciates the opportunity to comment on this important package of rule proposals. We would be happy to supply the Commission or the staff with additional information regarding any of the matters discussed herein. Please direct any questions about these comments to the undersigned or to our outside counsel, Mari-Anne Pisarri of Pickard and Djinis LLP. She can be reached at 202.223.4418.

Very truly yours,

A handwritten signature in black ink that reads "Daniel Curry". The signature is written in a cursive, slightly slanted style.

Daniel Curry
President
212.806.3244

A handwritten signature in black ink that reads "Mary Keogh". The signature is written in a cursive, slightly slanted style.

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