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By Electronic Mail

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rules for Nationally Recognized Statistical Rating Organizations ("NRSROs") – Release No. 34-64514; File No. S7-18-11 (the "Request for Comment")

I. Introduction

Moody's Investors Service ("**MIS**") appreciates the opportunity to provide feedback to the Securities and Exchange Commission ("**Commission**") on the Request for Comment. In the past few years, numerous proposals concerning the regulatory infrastructure of the financial services sector have been the subject of vigorous, public debate. We have welcomed the opportunity to discuss with private and public sector participants the role of credit rating agencies ("**CRAs**") and the value that credit ratings can bring to the markets. As the supervisory framework for CRAs has evolved, we have embraced the need for change because we believe that a modernized oversight regime will help increase confidence in ratings and the rating process, as well as instill greater discipline in the industry.

Two key objectives of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank Act**") are to increase accountability and transparency in the financial system as a whole. In furtherance of these objectives, Congress enacted measures specific to, among others, the CRA industry and the structured finance market and called upon federal agencies to reduce regulatory reliance on CRAs and credit ratings. We have kept these objectives and those of the Credit Rating Agency Reform Act of 2006 in mind in our analysis of the Request for Comment. We do not object in principle to most of the proposed new rules and amendments to existing rules and forms. We believe, however, that a few of them require substantial modification because they are inconsistent with the objectives of the governing legislation, regulate the substance of credit ratings or the rating process, or present a risk of unintended, adverse consequences for the market:

- **Disclosure of third-party due diligence providers' findings and conclusions:** Proposed rule 15Ga-2 would permit issuers and underwriters of asset-based securities ("**ABS**") to shift to NRSROs their obligation to disclose the nature, findings and conclusions of third-party due diligence reviews if the NRSROs hired to rate the ABS agree to publish the required disclosures at least five days before the first sale of the ABS. MIS strongly opposes the proposed exemption because it shifts responsibility for the disclosure from the parties that control the information (*i.e.*, the issuer and underwriter) to one that does not (*i.e.*, the NRSRO). This seems contrary to the expressed intent of Congress to require issuers of ABS to provide more information to the market about the offered securities and to be accountable for that information. It also creates new incentives for issuers and underwriters to select NRSROs on the basis of factors other than ratings quality.

- **Proposed prohibition on Rating Personnel[1] participating in sales and marketing activities:** To enhance the transparency, analytical rigor and independence of MIS's analytical approaches and opinions, MIS Rating Personnel engage in dialogue with a variety of informed market participants and observers with diverse perspectives on credit matters. We believe that proposed rule 17-5(c)(8), as currently drafted, does not prohibit these activities. The ambiguity of the words "participate" and "market", however, could lead to misunderstanding of the rule. For example, some users of credit ratings, including market participants and authorities, might adopt a very broad interpretation of the rule, leading to the incorrect conclusion that Rating Personnel are prohibited from engaging in essential analytical discussions with persons outside the NRSRO. The resulting confusion about the permitted scope of Rating Personnel's activities could undermine confidence in both the effectiveness of the regulatory framework for NRSROs and the integrity of credit ratings themselves. We recommend instead that the proposed rule be redrafted to align it more closely with the Dodd-Frank Act so that it requires NRSROs to have, enforce and document measures reasonably designed to prevent sales and marketing considerations from influencing the quality or integrity of the credit rating process.

- **The proposed definition of "rating action":** MIS believes that the Commission's proposed definition of "rating action" is overly broad. In MIS's view, putting a rating on review is a communication about the *potential* for a future rating action and an affirmation is a communication about *no* rating action. If these communications are rating actions, then even general research commentary could be considered a rating action because it might communicate something about potential developments. Because certain regulatory obligations are triggered by "rating actions", a broad definition of "rating action" that captures commentary may create incentives for NRSROs to publish commentary about their credit ratings less frequently. This could have an adverse effect on transparency and market participants' understanding of credit ratings and the rating process.

- **Classification of credit ratings as solicited or unsolicited:** The Commission is proposing to require NRSROs to label each credit rating as "solicited buy-side", "solicited sell-side" or "unsolicited" based on whether the rating is paid for and which type of market participant paid for it. We believe that equating "solicit" with "payment" would create confusion in the market. The proposed definitions are inconsistent with the ordinary meaning of the word "solicit", which is to "request" something, not pay for something. It also is possible that some NRSROs receive payment for credit ratings that they initiate, so the proposed definition of "solicit" likely does not reflect the actual practices of some NRSROs. In addition, the Commission's proposed

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1 To streamline the discussion in this Comment Letter, we use the term "Rating Personnel" to refer to individuals who participate in determining or monitoring credit ratings or developing or approving credit rating methodologies.

definitions are inconsistent with regulatory requirements in certain other jurisdictions, where an "unsolicited credit rating" is defined as one that is initiated by the CRA and not requested by the issuer. Moreover, requiring NRSROs to disclose which ratings are paid for and which type of market participant paid for them seems inconsistent with Congress's intent to promote analytical independence by shielding Rating Personnel from fee-related information and sales and marketing considerations. For these reasons, we are opposed to the Commission's proposed classifications of "solicited" and "unsolicited" credit ratings. Nevertheless, although the Dodd-Frank Act does not specifically contemplate that NRSROs will label their ratings as solicited or unsolicited, we would not object to identifying which of our credit ratings are unsolicited, based on the widely accepted definition of "unsolicited credit rating" set out above.

In our Comment Letter below, we have set out a detailed discussion of these issues and our recommended revisions to the proposed rules, while the Annex includes technical comments on other aspects of the proposed rules.

II. Disclosure of Findings and Conclusions of Third-Party Due Diligence Providers

A. Rule 15Ga-2

Section 945 of the Dodd-Frank Act requires the Commission to adopt rules requiring issuers of ABS to perform a review of the assets underlying the ABS and disclose the nature of that review in registration statements. It is clear from this provision that Congress intended ABS issuers to make more information about ABS available to the market and be accountable for the quality of information.

The Dodd-Frank Act also requires the Commission to adopt rules requiring issuers and underwriters, as well as NRSROs, to make available to the public certain information about third-party due diligence services in connection with ABS transactions.[2] These overlapping disclosure requirements create the potential for redundant disclosures.[3] To eliminate this potential redundancy, the Commission is proposing to include in rule 15Ga-2 an exemption for issuers and underwriters from the requirement to disclose the third-party due diligence provider's findings and conclusions, provided that the NRSROs hired to rate the ABS agree to disclose publicly the required information at least five days before the first sale of the ABS.

MIS strongly opposes the proposed exemption for the following reasons. First, MIS believes this exemption is contrary to the express intent of Congress to promote greater transparency and accountability among ABS issuers. Permitting them to shift their disclosure duties to NRSROs may result in issuers feeling less responsible for the quality of the information that is disclosed.

Second, we believe that the proposed exemption is contrary to the efforts of Congress, the Commission and others to clarify the limited role of CRAs in financial markets. CRAs are providers of credit opinions. In our view, rules that require or permit issuers and underwriters to use CRAs as a vehicle for their own disclosures create incentives for market participants to erroneously view CRAs as a

[2] See Sections 15E(s)(3)(v)(4) and of the Exchange Act, as amended by Section 932(a)(8) of the Dodd-Frank Act.

[3] In addition, the third-party due diligence firm is required to provide a certification about its due diligence services to the NRSRO. The Dodd-Frank Act contemplates that the NRSRO will make available to the public the third party's certification when it produces a credit rating. The certification is supposed to include sufficient information to enable the public to determine the adequacy and level of the third party's due diligence services.

"one stop shop" for all information relating to investment decisions. In the past few years, there has been a concerted effort by the Commission and other policymakers to reduce regulatory reliance on credit opinions. For example, the Commission has revised a number of rules to eliminate or reduce the use of ratings-based criteria. In our view, it would be incongruous if the Commission took steps to reduce the regulatory framework's reliance on CRAs as providers of credit opinions, only to increase reliance on CRAs in other areas, such as using them as vehicles for issuer disclosures.

Third, while the proposed exemption might reduce the potential for redundant, regulated disclosures, it is unlikely to reduce the potential for multiple, inconsistent disclosures about the due diligence services. For example, during the marketing phase, issuers and underwriters are likely to make statements about the assets underlying the ABS and the due diligence that was performed. Those statements may be made before, and will not necessarily be aligned with, the information contained in the third party's certification, which the NRSRO is required to make available. The Commission's proposed approach, therefore, could lead to confusion among investors because it will increase the number of "speakers" on the subject of due diligence and present a risk of inconsistent statements being made.

Fourth, we believe that the exemption will create incentives for issuers and underwriters to choose an NRSRO on the basis of factors other than ratings quality. Specifically, the proposed rule will create incentives to select NRSROs that are willing to make the issuers' and underwriters' disclosures about the third party due diligence providers' findings and conclusions for them.

For the reasons outlined above, we believe that the best way to address the potential for redundant disclosures is to require issuers and underwriters to make these disclosures, since they are the ones who are responsible for the information that is being reviewed by the third party. We recommend, therefore, that the Commission revise proposed rule 15Ga-2 to eliminate the proposed exemption described above.

B. Rule 17g-7(a)(2)

Paragraph (a)(2) of proposed rule 17g-7 requires NRSROs to make available to the persons who can receive or access the NRSRO's credit rating the certification[4] provided by the third-party due diligence provider to the NRSRO. To implement the requirement in the Dodd-Frank Act that NRSROs disclose the certification "in a manner that that allows the public to determine the adequacy and level of due diligence provided" by the third party, the Commission is proposing that the certification will include descriptions, provided to the NRSRO by the third party, of its activities, findings and conclusions.

We recognize that the Commission is proposing that the NRSRO "pass through" the third party's description of its activities, findings and conclusions as part of the third party's certification, and is not proposing to require NRSROs to create and disclose this information themselves. We believe, however, that using NRSROs as a vehicle for delivering information and commentary generated by other market participants is likely to increase the perceived importance of NRSROs in the financial system and may lead to confusion among market participants about the appropriate role of NRSROs. We believe, therefore, that paragraph (a)(2) of proposed rule 17g-7 should be revised so that NRSROs

[4] See proposed Form ABS Due Diligence-15E.

only are required to disclose the certification itself and are not required to pass through information about the nature or findings of the due diligence review.

We note that the proposed form of certification calls for the third-party due diligence provider to indicate whether the manner and scope of the due diligence satisfy the criteria of one or more NRSROs. We believe that persons other than the NRSRO should not provide opinions on whether the NRSRO's criteria have been satisfied. Due diligence providers are not credit analysts and are not in a position to express such opinions.

We recognize that the Commission may have limited discretion to exempt NRSROs from disclosure obligations contemplated in the Dodd-Frank Act. We believe, however, that the recommended changes to the Commission's proposed rules are consistent with the overall objectives of the provisions in the Dodd-Frank Act to reduce regulatory use of ratings, encourage greater transparency and accountability among structured finance issuers, and promote ratings quality.

C. Rule 17g-7(a)(1)(ii)(f)

Paragraph (a)(1)(ii)(f) of proposed rule 17g-7 also requires an NRSRO to disclose certain information about due diligence services that the NRSRO uses. We believe that the proposed rule should be revised as follows:

- The rule should be confined in scope to credit ratings on ABS. This approach is consistent with the remainder of the provisions in the Dodd-Frank Act regarding third-party due diligence services and with Congress's focus during the legislative process on the structured finance market. Moreover, requiring NRSROs to provide the disclosures described in paragraph (a)(1)(ii)(F) in connection with credit ratings on securities other than ABS could put NRSROs in a difficult position. While MIS does not retain third parties to conduct due diligence with respect to the obligations it rates, it may seek to use reports prepared by third parties to verify certain information provided by issuers or their agents. MIS often receives such reports on the condition that it keep them confidential, and it is not in a position to modify the terms of permitted use because it does not retain the due diligence provider. If these reports are considered to be "due diligence reports" within the meaning of paragraph (a)(1)(ii)(F) of proposed rule 17g-7, then MIS might be unable to obtain such reports to verify information provided by issuers or their agents.

- We do not object to the requirements that the NRSRO disclose whether and to what extent it used the findings or conclusions of a third-party due diligence provider (either hired by the NRSRO or hired by the issuer or underwriter) in its credit assessment of the ABS.

- For the reasons set out above in our discussion of proposed rule 15Ga-2, MIS believes that issuers and underwriters, not NRSROs, should pass through the third party's description of the information reviewed and the third party's findings and conclusions.

- If the Commission nevertheless concludes that NRSROs should disclose this information, we recommend that the Commission clarify that the disclosure requirement can be met by the

NRSRO passing through the certification that the third party provides to the NRSRO.[5] Just as a third party due diligence provider should not be asked to comment on an NRSRO's criteria, an NRSRO should not be asked to describe the third party's due diligence services and summarize the third party's findings and conclusions. Asking someone other than the entity that performed the activity to describe it presents a significant risk of inadvertent mischaracterization of the information. Having each NRSRO provide its own description of the due diligence services also could result in there being multiple, different descriptions of the same activity, which likely would be confusing to investors. In addition, having NRSROs draft and disclose the descriptions of the due diligence activities, findings and conclusions creates a risk that market participants will erroneously view the NRSRO as the due diligence provider.

III. Prohibition on Sales and Marketing Activities

A. Overview

Section 932(a)(4) of the Dodd-Frank Act requires the Commission to adopt rules to "prevent the sales and marketing considerations of a nationally recognized statistical rating organization from influencing [its] ... production of ratings." To implement this provision, the Commission is proposing to make it a prohibited conflict of interest for a person within the NRSRO who "participates in sales or marketing" of a product or service of the NRSRO or any of its affiliates also to participate in "determining or monitoring the credit rating, or developing or approving procedures or methodologies for determining the credit rating."

MIS supports the objective in the Dodd-Frank Act to prevent the sales and marketing considerations of NRSROs from influencing credit ratings. For the reasons outlined below, however, we believe that ambiguities in the proposed rule could lead to confusion among users of credit ratings about the scope of Rating Personnel's permitted activities, which could undermine confidence in the regulatory framework for NRSROs and credit ratings themselves. We recommend, therefore, that the Commission adopt a rule that is more closely aligned with the governing legislation.

B. Analytical Discussions with Persons outside the NRSRO Are Critical to Achieving Legislative Objectives

MIS Rating Personnel do not sell the products or services of MIS or its affiliates, nor do they participate in commercial functions. They are expected, however, to communicate with a wide variety of informed market participants and observers. These discussions enhance analytical rigor and bolster independence in the rating process by exposing MIS Rating Personnel to diverse perspectives on the information MIS receives as part of the rating process, our analytical approaches and our opinions. We believe these activities help MIS satisfy the requirement in Section 935 of the Dodd-Frank Act to consider information about an issuer from sources other than the issuer or underwriter. This dialogue

[5] As indicated above, MIS believes that the disclosure requirements in paragraph (a)(1)(ii)(F) of proposed rule 17g-7 should apply only in respect of credit ratings on ABS. If the Commission nevertheless decides that this paragraph should apply to credit ratings on other types of obligations, MIS believes that the Commission should require third-party due diligence providers to provide NRSROs with a certification that contains the information about the due diligence services that the Commission wishes the NRSRO to make available to users of its credit ratings.

also serves the important purposes of promoting transparency and understanding of MIS's analytical approaches and credit opinions.

MIS believes that the Commission does not intend to prohibit the activities described above, and we believe that these activities do not fall within the scope of the proposed prohibition. The ambiguity of the words "participate" and "market" in the proposed rule, however, could lead to misunderstanding of the rule. For example, some users of credit ratings, including market participants and authorities, might adopt a broad interpretation of the rule, leading to the incorrect conclusion that Rating Personnel are prohibited from engaging in essential analytical discussions with persons outside the NRSRO. A broad interpretation of the proposed rule, for example, could characterize presentations at a conference by an analyst on the NRSRO's methodologies and opinions as participation in the marketing of the NRSRO's products and services since the presentation might serve to promote the NRSRO's thought leadership in credit markets. Likewise, an analyst who explains a methodology to an investor might be characterized as "marketing" MIS's ratings or research under an expansive interpretation of the proposed rule.

The resulting confusion about the permitted scope of Rating Personnel's activities could undermine confidence in both the effectiveness of the regulatory framework for NRSROs and the integrity of credit ratings themselves. NRSROs might respond to this confusion by imposing unnecessary restrictions on the conduct of their Rating Personnel, which could adversely affect ratings transparency, quality and integrity.

Some might suggest that an NRSRO could avoid the risk described above by having individuals other than Rating Personnel communicate with issuers, investors and potential subscribers. MIS believes, however, that the analytical communications described above should rest with our Rating Personnel. First, as noted above, MIS Rating Personnel need direct access to people outside MIS who are familiar with credit market developments and can challenge Rating Personnel's analysis, thereby enhancing analytical rigor. Second, our Rating Personnel are the best qualified individuals in MIS to explain our analytical approaches and opinions. Third, to reinforce the independence of the credit rating process, MIS has charged groups other than MIS's rating groups with responsibility for commercial functions such as sales and marketing. Consistent with this separation of the commercial and analytical functions, MIS believes that Rating Personnel rather than commercial personnel should explain MIS's methodologies and opinions.

For the reasons set out above, we believe that a rule that is more closely aligned with the language used in Section 932(a)(4) of the Dodd-Frank Act would better achieve Congress's objectives of enhancing management of potential conflicts of interest, promoting ratings quality and encouraging transparency in the rating process without generating uncertainty about the scope of permitted activities. We recommend, therefore, that the proposed rule be revised as follows:

> "Each nationally recognized statistical rating organization must establish, maintain, enforce and document measures reasonably designed to prevent sales and marketing considerations with respect to the products and services of the nationally recognized statistical rating organization or its affiliates from influencing the quality or integrity of credit ratings."

IV. Definition of "Rating Action"

If adopted as proposed, several of the Commission's proposed rules will require NRSROs to treat certain events, such as publishing commentary about a credit rating, as rating actions. In particular, paragraph (a) of proposed rule 17g-7 states that, for purposes of that section, the term "rating action" means, among other things, placing a credit rating on credit watch or review, affirming (or confirming) a credit rating, and/or downgrading to default or assigning default status. Paragraph (b) of proposed rule 17g-7 requires each NRSRO to include in its publicly available XBRL rating history data file various types of "rating actions", including placing a credit rating on review or watch, affirming or confirming a credit rating, and/or downgrading or assignment of default.

When MIS puts a credit rating on review, that statement is not a credit rating action. It is commentary about a rating, and a communication about a *potential* rating action in the future, just as is a research publication commenting on credit trends affecting an issuer or industry. Similarly, if MIS publishes a statement indicating that a credit rating remains the same, that statement is simply a comment on an existing rating, not a rating action.

"Rating actions" trigger regulatory obligations, in the United States and elsewhere. We believe that requiring NRSROs to treat commentary like placing a rating on review, affirmations or confirmations as "rating actions" could inadvertently discourage NRSROs from communicating these signals about the stability or likely future direction of rating actions to the market. This outcome would be inconsistent with efforts made by the Commission, other regulators globally and NRSROs to promote greater transparency with respect to ratings and the rating process.

In addition, the Commission's proposal to classify downgrades to or assignments of default status to obligations may reflect the mistaken presumption that all NRSROs have a rating category for issuers and obligations that represents "Default". Some NRSROs do have such a rating category but MIS's Global Rating Scale does not include a "D" or "Default" category.[6] While MIS classifies certain obligations as in default for purposes of our rating performance statistics, this classification of the obligation does not occur simultaneously with or constitute a rating action.

We also believe that the Commission's proposed definition of "rating action" is a type of substantive regulation of credit ratings and the rating process. Specifying that certain types of commentary constitute changes in an NRSRO's opinion affects the opinions themselves and, therefore, the substance of the NRSRO's rating system, processes and opinions. If this type of regulation is substantive in nature, then it is prohibited by paragraph (c)(2) of Section 15E of the Exchange Act.

Consequently, for the reasons outlined above, we recommend that the Commission revise its proposed definition of "rating action" to exclude affirmations, confirmations, the placement of credit ratings on watch or review, and the assignment of default status. (If an NRSRO has a rating category that represents "Default", then the concept of a downgrade will encompass downgrades to "Default".)

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[6] MIS does assign D (for default) and LD (limited default) ratings on MIS's Probability of Default ("**PDR**") scale but these ratings apply only to corporate issuers at the level of the corporate family. These ratings are not assigned at an individual issuer or obligation level.

V. Characterization of Credit Ratings as Solicited or Unsolicited

According to paragraph (a)(1) of proposed rule 17g-7, each NRSRO will have to publish a disclosure form in connection with each rating action. In the disclosure form, the NRSRO will have to classify the credit rating as "solicited buy-side", "solicited sell-side" or "unsolicited", according to whether the credit rating was paid for and, if so, who paid for it.

For the following reasons, we recommend against requiring NRSROs to label credit ratings as "solicited" or "unsolicited" based on whether the rating is paid for. The ordinary meaning of the word "solicit" is "request". Therefore, a solicited credit rating is one that is requested by someone. Payment is a completely separate issue, and NRSROs may have differing practices. For example, while it is MIS's policy not to seek or accept remuneration from an issuer for at least one year after publishing an unsolicited credit rating, this might not be the case for other NRSROs. Therefore, some NRSROs might assign unsolicited, paid ratings.

If rule 17g-7(a)(1) is adopted as proposed, users of credit ratings could inadvertently draw the wrong conclusions about whether an issuer requested a credit rating because the Commission's definition conflates paid ratings with solicited ratings. Moreover, linking "solicited" to the concept of payment is inconsistent with both the International Organization of Securities Commissions Code of Conduct Fundamentals for Credit Rating Agencies ("**IOSCO Code**") and the European Regulation on Credit Rating Agencies.[7] Several jurisdictions have adopted laws incorporating the IOSCO Code or requiring CRAs to adopt the IOSCO Code. NRSROs that operate in these jurisdictions or Europe, therefore, may have to disclose that they are classifying the same credit rating as solicited under the laws of one jurisdiction and unsolicited in another, adding complexity and confusion for market participants.

In addition, the Commission and other authorities have stressed the importance of insulating Rating Personnel from commercial influences. Indeed, the provision in the Dodd-Frank Act requiring the Commission to make rules to prevent sales and marketing considerations from influencing the production of ratings is intended to enhance the separation of the analytical and commercial functions. Similarly, consistent with the revised IOSCO Code and Commission rule 17g-5(c)(6), MIS prohibits anyone who participates in determining or monitoring credit ratings or developing or approving rating methodologies from participating in discussions regarding the fees paid for the rating. Although MIS Rating Personnel know that MIS generally follows an issuer-pays business model, they are not told whether a specific credit rating has been paid for or who has paid for the rating service. These arrangements are intended to bolster analytical independence and ensure that rating quality is not diminished by commercial interests. The extension, strengthening and ongoing maintenance of these firewalls have involved a significant investment of time and resources.

If, however, paragraph (a)(1)(ii)(J) of proposed rule 17g-7 is adopted as proposed, information about which ratings are paid for and the type of market participant who paid for them will become

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7 The European Regulation defines an "unsolicited" credit rating as one that is not initiated at the request of the issuer or rated entity. The relevant provision in the IOSCO Code calls for CRAs to identify those credit ratings where the issuer did not initiate the rating and those where the issuer did not participate in the rating process. In both the European Regulation and the IOSCO Code, the concept of payment is irrelevant to the issue of whether a credit rating is solicited.

available to the public and, consequently, to MIS Rating Personnel. Access to such information could undermine our efforts and those of the Commission and other regulators globally to shield analysts from such information in order to promote independence in the credit rating process. Exposing Rating Personnel to information about which credit ratings are paid for and which type of market participant paid for them also seems inconsistent with Congress's efforts to prevent sales and marketing considerations from affecting credit ratings. Accordingly, we strongly oppose the proposed rule in its current form.

We note that the Dodd-Frank Act does not specifically direct the Commission to adopt rules requiring NRSROs to disclose which of their credit ratings have been requested by a market participant and/or which of their credit ratings are paid for. If the Commission nevertheless decides to require NRSROs to distinguish between solicited and unsolicited ratings, we believe that the Commission should adopt the widely accepted definition of "unsolicited credit rating". Specifically, an "unsolicited" credit rating would be one that was initiated by the NRSRO and not requested by the issuer or its agents. We note that the IOSCO Code and the European Regulation do not consider credit ratings requested by an investor to be "solicited" credit ratings. Therefore, to reduce confusion in the market, we suggest that the Commission adopt a similar approach.

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Once again, we appreciate the opportunity to provide feedback on the Request for Comment. We would be pleased to discuss our comments further with the Commission or its staff.

Sincerely,

Michel Madelain
President and Chief Operating Officer
Moody's Investors Service

ANNEX - TECHNICAL COMMENTS

1. Training and Testing Requirements

MIS does not object to the overall approach taken by the Commission to implement its legislative mandate regarding the competence, experience, training and testing of Rating Personnel. We do, however, have several technical comments regarding proposed rule 17g-9, as set out below.

A. Scope of the Testing Requirement

Section 936 of the Dodd-Frank Act requires the Commission to issue rules reasonably designed to ensure that Rating Personnel are tested for knowledge of the credit rating process. Proposed rule 17g-9(c) calls for the NRSRO to test Rating Personnel periodically on their knowledge of rating procedures and methodologies. We are not opposed in principle to a requirement to test on knowledge of credit rating methodologies or rating procedures.

We recommend, however, that the testing requirement apply only to the credit rating procedures and methodologies that fall within the scope of the individual's primary area or areas of analytical responsibility. We recommend this somewhat narrower scope for the testing requirement because, since the financial crisis, MIS has taken steps to increase cross-sectoral and cross-jurisdictional participation in rating committees. For example, a rating committee convened to consider the credit rating on a financial institution that has a large portfolio of structured finance products might include structured finance analysts, since these individuals can offer a different perspective based on their knowledge of specific types of structured finance products and credit trends in the relevant asset classes. MIS also has specialists, such as accounting specialists, who may be called upon to participate in a wide range of rating committees across industries or sectors, in order to facilitate consistent analysis of financial information. We believe that including MIS Rating Personnel from outside the rating team that is principally responsible for analyzing issuers in a particular industry, asset class or region enhances the quality, integrity and global comparability of our credit ratings. If, however, MIS Rating Personnel must be tested on all of the methodologies that are used in any of the rating committees in which they participate, it will be much more difficult to have cross-sector and cross-jurisdictional participation in rating committees. We suggest, therefore, that paragraph (c)(1) of proposed rule 17g-9 be reworded as follows:

> "A requirement for periodic testing of the individuals employed by the nationally recognized statistical rating organization to determine credit ratings on their knowledge of the procedures and principal methodologies used by the nationally recognized statistical rating organization to determine credit ratings in the classes and subclasses of credit ratings in the region and industry sub-sector or asset sub-class with which the individual is primarily associated and for which the individual participates in determining credit ratings."

B. Employment Law Considerations

MIS believes that implementing competence, experience, training and testing requirements on a global basis may present challenges and raise conflict of laws issues in certain jurisdictions. For example, in some jurisdictions it might not be possible to require an existing employee to meet new competence, experience, training or testing requirements unless he or she agrees to such requirements in an amended employment agreement or collective bargaining agreement. If the employee, union or works council declines to sign the amended agreement, it might not be possible for the NRSRO to modify unilaterally the employment relationship. Accordingly, we recommend that proposed rule 17g-9 include a qualification to the effect that excuses the NRSRO from compliance with any aspect of the requirements in the rule to the extent the NRSRO reasonably believes it is prohibited by applicable law or binding agreements in the relevant jurisdiction from doing so.

C. Compliance Deadlines

MIS already has a continuing education program for MIS Rating Personnel that is targeted to their professional responsibilities. Nevertheless, we believe that it will take a significant amount of time to revise, enhance and document our training program so that, among other things, it specifically addresses the four criteria set out in paragraph (b) of proposed rule 17g-9 and is appropriately tailored for groups of similarly situated MIS Rating Personnel. While we have training specialists at MIS and may engage outside consultants to assist us in enhancing our training program, it also will be necessary to involve a large number of senior MIS Rating Personnel in developing the curriculum. They are the most familiar with the nuances of our methodologies and therefore are best situated to assist in developing and vetting the substantive elements of our courses. Since these individuals must devote most of their time to their analytical responsibilities, there are constraints on the amount of time they can allocate to developing the enhanced curriculum. In addition, once the course content is developed, it may be necessary to translate it into multiple languages. Accordingly, we recommend that the compliance date for the training standards component of proposed rule 17g-9 be at least one year from the date rule 17g-9 is adopted. Alternatively, the Commission could provide guidance to the effect that while the overall framework for the training program must be established by a specified date (e.g., six months from the date rule 17g-9 is adopted), the elaboration of the detailed curriculum can be completed at a later date named by the Commission.

We also believe that it will require substantial resources and more lead time to design and roll out globally a testing program on credit rating methodologies. It will be particularly important to validate the tests before rolling them out. Poorly designed tests could result in high failure rates, which could adversely affect an NRSRO's ability to assign and monitor credit ratings. It also is critical to develop tests that comply with local employment laws, including laws designed to prevent disparate impact discrimination. It also may be necessary to translate tests into different languages and validate the translations. Finally, it is likely that NRSROs operating in jurisdictions where unions or works councils represent employees will need to obtain approval from these bodies concerning the general proposal to test analysts and possibly the content of the tests themselves.

We note that the Dodd-Frank Act only requires the Commission to issue rules requiring testing on the rating process. Therefore, one option would be for the Commission to refrain from adopting a testing requirement on methodologies until NRSROs have had an opportunity to introduce and fine-tune their training programs on methodologies and their testing programs for the rating process. In the alternative, we recommend that the Commission set staggered compliance deadlines for the testing requirement in the proposed rule. For example, the requirement to test on the rating process could have a deadline of one year after the rule is finalized, while the requirement to develop standards for testing on methodologies could have a two-year deadline.

2. Look-back Reviews

A. Requirement to Put Affected Rating on Review

According to proposed rule 17g-8(c), if an NRSRO concludes that a credit rating was influenced by a conflict of interest identified during a look-back review, the NRSRO must immediately place the credit rating on review and disclose that the reason for doing so is that the credit rating was influenced by a conflict of interest. We appreciate the rationale for such a requirement, but we believe that prescribing the circumstances when an NRSRO must put a rating on review constitutes substantive regulation of the credit rating process. To the extent this is substantive regulation, such a rule would be inconsistent with Section 15E(c)(2) of the Exchange Act.

If the Commission nevertheless decides to require NRSROs to put a credit rating on review in the circumstances described above, MIS believes that the Commission should not prescribe the reason that must be disclosed in connection with the NRSRO's publication of its decision. Instead, the Commission could require NRSROs to disclose the key factors underlying the decision to place the rating on review. We believe this type of requirement would achieve the same objective as the proposed rule.

B. Revision/Affirmation of Credit Ratings and Associated Disclosures

If adopted, paragraph (3) of proposed rule 17g-8(c) will require an NRSRO that determines that a credit rating was influenced by a conflict identified in a look-back review to determine whether the current credit rating must be reconsidered and, if so, either revise the affected credit rating or affirm it, as appropriate. If the NRSRO determines that it is appropriate to revise the credit rating, the NRSRO must disclose that the reason for the action is the discovery that the credit rating was influenced by a conflict of interest. If the NRSRO determines that it is not necessary to revise the credit rating, it must explain why no action is being taken.

Consistent with the views expressed in section IV of the Comment Letter, MIS believes that requiring an NRSRO to affirm a credit rating involves substantive regulation of the rating process. If it is substantive regulation, then it is prohibited by Section 15E(c)(2) of the Exchange Act. Accordingly, we recommend that this aspect of the proposed rule be deleted. Similarly, for the reasons set out in section 2(A) above, MIS believes that the Commission should not prescribe the reasons to be disclosed for revising or affirming the credit rating. We believe that a requirement to disclose the key factors underlying a decision to revise the credit rating would achieve the same objective.[8]

If adopted, paragraph (3) of proposed rule 17g-8(c) also would require the NRSRO to "estimate the impact the conflict had on each prior rating action" that was influenced by the conflict of interest. The nature of the credit rating process at MIS is such that, in almost all circumstances, it will be

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[8] Moreover, it is conceivable that an NRSRO could decide to reconsider a rating that it determined had been influenced by a conflict of interest and determine that the rating needed to be revised for several reasons, including but not limited to the fact that the rating had been influenced by a conflict of interest. The proposed rule does not seem to contemplate the possibility that a rating might be revised for more than one reason.

practically impossible to estimate the impact of a conflict on a prior rating action. Credit ratings are determined collectively by committees that weigh various quantitative and qualitative factors at a particular point in time. Although rating committees apply approved methodologies, rating decisions, in the end, involve specific individuals exercising judgment to make educated predictions in a dynamic environment. Those individuals affect and are affected by the discussion that surrounds them. This is not a mechanistic process that can be re-run through a simulator to subtract the influence of one individual, see whether a different outcome would be produced and measure the difference. For these reasons, we believe that requiring NRSROs to publish an estimate of the impact of the conflict on the prior rating action would not result in meaningful disclosure to the market. Accordingly, we recommend that this disclosure requirement be deleted.

C. Deadlines for Reconsidering Credit Ratings and Publishing Revised Credit Ratings

We agree with the Commission that it is critical for an NRSRO to react swiftly if it concludes that a credit rating was influenced by a conflict of interest identified during a look-back review. NRSROs no doubt will take as soon as practicable whatever steps are necessary and possible in such circumstances to reconsider and, if appropriate, revise and republish credit ratings affected by a conflict of interest. It might not be possible, however, to take all of the necessary steps within minutes or hours. Reconsidering a credit rating requires the collection and analysis of information relevant to the issuer and obligation subject to the rating. The issuer should be given an adequate opportunity to provide relevant information and answer the NRSRO's queries about that information. Before the rating committee can be held, certain procedures may have to be followed (such as checking that potential participants in the rating committee do not have a conflict of interest). If the rating committee concludes that it is appropriate to change the rating, the issuer will be informed of the key factors underlying the NRSRO's decision and will be given an opportunity to correct any factual errors that are relevant to the rating decision. Moreover, if a change in the credit rating in question could have an impact on other credit ratings, steps may need to be taken to make it possible to revise and publish a number of other credit ratings at the same time or shortly thereafter. Market participants would be ill-served by a hasty process where the NRSRO artificially limited its inquiries and deliberations in order to meet a regulatory deadline.

We believe that an NRSRO that takes the necessary steps "as soon as practicable" would meet the requirements in the proposed rule to act "immediately" or "promptly", as the case might be. Given the ambiguity of the latter two terms and especially the term "promptly", however, we recommend that the proposed rule be revised to incorporate deadlines based on the concept of "as soon as practicable."

D. Recommended Changes to the Proposed Rule

To reflect our comments, we recommend that proposed rule 17g-8(c) be revised as follows:

"The policies and procedures a nationally recognized statistical rating organization is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Act (15 U.S.C. 78o-7(h)(4)(A)) must address instances in which a review conducted pursuant to those policies and procedures determines that a conflict of interest influenced a credit rating assigned to an obligor, security, or money market instrument by including, at a minimum, procedures that are reasonably designed ~~to ensure~~ so that the nationally recognized statistical rating organization will:

~~(1) Immediately publish a rating action placing the applicable credit ratings of the obligor, security, or money market instrument on credit watch or review based on the discovery of the conflict and include with the publication of the rating action the information required by §240.17g-7(a)(1)(ii)(J)(3)(i) of this chapter;~~

(~~2~~1) ~~Promptly~~ Determine as soon as practicable whether the current credit rating assigned to the obligor, security, or money market instrument must be ~~revised~~ reconsidered by individuals who do not have a conflict of interest; ~~so that it~~ ~~no longer is influenced by a conflict of interest and~~ ~~is solely~~ ~~a product of the documented procedures and methodologies the nationally recognized statistical rating organization uses to determine credit ratings; and~~

(~~3~~2) ~~Promptly publish, based on the determination of whether the current credit rating assigned to the obligor, security, or money market instrument must be revised (as applicable)~~ If necessary, reconsider the credit rating as soon as practicable; and

(~~4~~3) If the credit rating is revised, publish as soon as practicable the revised credit rating ~~(i) A revised credit rating, if appropriate~~, and include with the publication of the revised credit rating a description of the key factors underlying the rating action~~the information required by §240.17g-7(a)(1)(ii)(J)(3)(iii) of this chapter~~."

3. Disclosures Accompanying Credit Rating Actions

MIS is not opposed in principle to paragraph (a)(1) of proposed rule 17g-7, which requires each NRSRO to publish a disclosure form when it takes a credit rating action. We do have, however, the following technical comments, as well as comments on the compliance deadline for proposed rule 17g-7(a) as a whole.

A. Disclosure Form Should Not Be Required for Certain Withdrawals

The disclosure form requirements will apply to certain types of frequent rating actions that are mechanical in nature and are not based on a credit assessment or analysis. These include withdrawals of credit ratings in connection with routine debt maturities, calls or redemptions. We understand that the principal purpose of the disclosure form requirement is to provide information to market participants in a manner that is easy to use and helpful to investors' understanding of the information contained in the form. We believe that publishing thousands of disclosure forms in respect of events like those described above could make it more difficult for market participants to sort through an NRSRO's publications to locate significant information. Moreover, many of the disclosures required by the proposed rule would not be relevant in connection with such rating actions and so the disclosure form would add very little to information available to market participants. We recommend, therefore, that the Commission exempt NRSROs from the requirement to publish a disclosure form in connection with withdrawals of credit ratings that are mechanical in nature and not based on a credit assessment or analysis.

B. Relevance of Required Disclosures in Particular Circumstances

It is unclear from the Request for Comment whether and how an NRSRO should apply specific disclosure requirements that are irrelevant to a particular credit rating or rating action. Some examples of situations that raise this issue are as follows:

- ***Assumptions:*** Paragraphs (a)(1)(ii)(M)(1) and (2) of proposed rule 17g-7 will require the NRSRO to disclose the five assumptions made in the rating process that, without accounting for any other factor, would have the greatest impact on the rating if the assumptions were proved false or inaccurate and an analysis of how these assumptions affect the credit rating. MIS expects that there may be instances where there are fewer than five significant assumptions. In such circumstances, we believe it would be appropriate to disclose fewer than five assumptions.
- ***Withdrawals:*** As discussed in subsection A above, MIS believes that the disclosure form requirement should not apply to withdrawals associated with routine debt maturities, calls or redemptions. If the Commission nevertheless decides that the disclosure form requirement should apply to these types of withdrawals, we expect that it will be challenging for NRSROs to apply some of the disclosure form requirements. For example, disclosures about the reliability, quality and accuracy of data relied on in determining the credit rating are not relevant to a routine withdrawal. Similarly, disclosures about the potential volatility of the rating are not relevant where the rating action is a withdrawal.

In our view, the simplest way to address these situations is to revise paragraph (a)(1)(ii) of proposed rule 17g-7 to include "to the extent applicable" after the phrase "must contain the following information about the credit rating."

C. Attestation Requirement

To implement section 15E(q)(2)(F) of the Exchange Act, the Commission has proposed paragraph (a)(1)(iii) of proposed rule 17g-7, which will require each NRSRO to attach to the disclosure form a signed attestation by a person within the NRSRO. We have the following technical comments on the proposed attestation requirement.

I. Some Credit Ratings Apply to Entities, Not Instruments

Paragraph (a)(1)(iii) of proposed rule 17g-7 requires an attestation that the credit rating is based "solely on the merits of the instrument being rated". We note that some of our credit ratings apply to obligors or other entities. Accordingly, we recommend that the quoted phrase above be revised to the "merits of the instrument<u>, obligor or entity</u> being rated."

II. Credit Ratings Speak only to Credit Risk

Paragraph (a)(1)(iii) of proposed rule 17g-7 requires an attestation to the effect that the credit rating is an independent evaluation of "risks and merits of the proposed instrument." MIS's credit ratings speak only to credit risk. We are concerned that the wording of the proposed attestation could inadvertently lead users of credit ratings to believe that credit ratings address other types of risk, such as liquidity risk, market value risk or price volatility. Since one of the objectives of the Dodd-Frank Act is to promote greater understanding among market participants of the uses and limitations of credit ratings, we believe that the proposed rule should be revised so that it is consistent with the nature of credit ratings. Specifically, the attestation should state that the credit rating is an independent evaluation of the "credit risks ~~and merits~~ of the proposed instrument or entity being rated."

D. Maintaining Access to Disclosure Forms

MIS makes its currently outstanding credit ratings available through the website moodys.com to any person who registers on the website and accepts its terms and conditions. A question, therefore, arises whether an NRSRO must continue to make available "to the same persons who can receive or access the credit rating" the disclosure forms for credit ratings that have been withdrawn. In our view, it would be appropriate to permit an NRSRO to remove from its website the disclosure form associated with the withdrawal of the credit rating three years after the date the credit rating is withdrawn. This three-year period would coincide with the record retention period for current credit ratings.

E. Compliance Deadline

MIS requests that the compliance deadline for proposed rule 17g-7(a) provide sufficient lead time to enable NRSROs to employ a rigorous process for developing and testing the changes to software and systems needed to implement the requirement. Implementing this rule at MIS will require significant changes to a number of integrated and inter-related, global systems. These systems affect not just the publication of ratings but also ratings workflow, billing and, ultimately, the financial reporting for Moody's Corporation ("**MCO**").[9]

We believe that a delayed compliance deadline of at least one year from the date final rules are published is justified for the following reasons:

- MIS has been working since before the Request for Comment was published to develop the necessary business requirements for the changes to our software and systems. It will not be possible, however, to finalize detailed business requirements for a change this complex until after the final rules are published. Detailed business requirements are an essential component of robust software methodology development processes.
- Certain steps in the development process must be done sequentially. For example, several sets of changes will have to be made to some of our systems to implement the disclosure form rule. Each set of changes requires its own unit testing, and to produce valid results this testing must occur sequentially rather than in parallel.
- While it is possible to shorten the overall development process to some extent by employing separate teams to work on different aspects of the required changes, key elements of the overall development process must be handled by the same group of subject matter experts in order, for example, to achieve consistency in approach across the whole project. This group of experts are subject to human limitations regarding the number of available hours they can devote to the project.

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[9] Since MCO is a publicly traded company registered with the Commission, it must establish, maintain, document and test internal controls and procedures for financial reporting. To implement the proposed disclosure form requirement, MIS will have to change software and systems that provide key data used for MCO's financial reporting.

- Implementing the disclosure form requirement will require us to make changes to multiple systems at the same time. These are systems that operate 24 hours a day, seven days a week, across the globe. Scheduling such a change to our systems requires lead time and such a change must be assigned an appropriate prioritization that takes into account other major changes to our systems in response to the needs of market participants and other regulatory initiatives in other jurisdictions.

This proposed compliance deadline should apply to the disclosure form, attestation and third-party due diligence certification requirements since they are inter-connected and present similar technological challenges.

We recognize that these disclosure requirements are key initiatives for enhancing transparency and facilitating enhanced understanding of ratings and the rating process. In our view, however, it is critical that NRSROs have sufficient time to implement the changes in a way that minimizes the risks of error and of disruption to the markets.

4. Public Disclosure of Rating Performance Data

MIS does not object to most aspects of the Commission's proposed amendments to rating performance disclosure requirements set out in proposed rule 17g-7(b) and the instructions to Exhibit 1 of Form NRSRO. We do, however, have the following technical comments on these provisions.

A. Certain Disclosure Requirements Should Apply Prospectively

Proposed rule 17g-7(b) and the instructions for revised Exhibit 1 will require NRSROs to disclose historical rating performance data. For example, proposed rule 17g-7(b) will require each NRSRO to include in an XBRL file various data on each credit rating that the NRSRO initially assigned on or after June 26, 2007 or that was outstanding as of that date. Among other things, the NRSRO will have to disclose each rating action taken on or after June 26, 2007. The term "rating action" is defined to include the initial assignment of a rating, upgrades, downgrades, a downgrade to or assignment of default, placing a rating on watch or review, affirmations or confirmations, withdrawals because a rating goes into default, withdrawals because an obligation is paid in full and other withdrawals. Similarly, the instructions for Exhibit 1 of Form NRSRO will require each NRSRO to present a Transition/Default Matrix for the preceding one, three and ten years that indicates what percentage of rated obligations in a given cohort meet the Commission's definitions of "Default", "Paid Off" or "Withdrawn".

As discussed earlier, MIS does not consider affirmations, confirmations, the placement of a credit rating on review, or the assignment of default status to be credit rating actions. Therefore, we do not systematically capture some of this information in a readily retrievable format. Moreover, we do not systematically capture data that sub-divides withdrawn credit ratings into the three sub-categories of "Withdrawn due to default", "Withdrawn – paid in full" and "Withdrawn – other" set out in proposed rule 17g-7(b). Collecting this data for past credit rating actions likely would require tens of thousands of hours of analysis, since the work would have to be done manually. Collecting the data required for revised Exhibit 1 of Form NRSRO so that it can be classified according to the Commission's proposed definitions of "Default", "Paid Off" and "Withdrawn – other" would present a similar challenge. MIS believes that such a requirement would represent a substantial cost of the proposed rule and that this cost should be incorporated into the Commission's cost-benefit analysis and considerations of efficiency pursuant to Section 3(f) of the Exchange Act.

We have described above some of the limitations that exist with respect to the data that MIS maintains systematically in a format from which the data can be retrieved reliably and readily. Other NRSROs may face these or other limitations with respect to the availability of data. MIS recommends that proposed rule 17g-7(b) and the instructions for Exhibit 1 of Form NRSRO exempt NRSROs from the requirement to include any historical data required by these provisions to the extent the NRSRO does not already systematically capture such data in a readily retrievable format.

B. Construction of Cohorts for Rating Performance Statistics

The proposed changes to the instructions for Exhibit 1 of Form NRSRO call for each NRSRO to construct cohorts consisting of the obligors, securities and money market instruments in the relevant class or subclass of credit ratings that were assigned an outstanding credit rating as of the period start date. For its structured finance rating performance statistics, MIS constructs cohorts at the level of the rated security or obligation. For our fundamental rating performance statistics, however, MIS constructs cohorts at the level of the obligor, not at the level of the rated security or obligation. We note that a single fundamental issuer can have many, separate rated issuances of debt. If, therefore, an NRSRO includes each separate, rated issuance of a single issuer in the cohort, the performance statistics likely will become skewed. The ratings and rating transitions associated with a single issuer that has many rated issuances outstanding will dominate the data. We believe that a more meaningful way to construct rating performance statistics for these types of issuers is to identify or calculate (by inference) a senior rating for a given issuer and use that senior rating in the construction of the cohort.

C. Disclosure of Identifiers for Rated Obligors and Obligations

The Commission is proposing to require NRSROs to include certain types of instrument and entity identifiers in the XBRL rating history data file. The proposed identifiers include CUSIP numbers for instruments, Central Index Key ("**CIK**") numbers for issuers and obligors, and "legal names" for issuers. We understand the rationale for requiring NRSROs to use the same data identifiers in their XBRL data files. In theory, if all NRSROs use the same types of identifiers, it will be easier for users of those files to compare the data across NRSROs. There are significant challenges, however, associated with using the existing identifiers. Among other things:

- Certain identifiers, like CUSIPS and CIKs, generally are not used outside the U.S. Therefore, these identifiers may not be available for many of the NRSROs' credit ratings.
- There is no official source for legal names and no generally accepted approach for determining the correct legal name. We are aware of numerous situations where different firms use different legal identifiers for the same entity. Also, the way in which an entity is identified can change over time (*e.g.*, because of transactions such as mergers and acquisitions). Accordingly, while MIS seeks to resolve any discrepancies in the identifying information it uses, we cannot always have complete confidence in the accuracy of these aspects of the data we use (particularly with respect to older, historical data).

- Providers of certain identifiers, such as CUSIPs and ISINs, view these identifiers as proprietary. Where there is only one provider for an identifier like a CUSIP or ISIN and NRSROs are required to disclose those identifiers, the NRSROs' ability to negotiate reasonable license fees for the required use is significantly compromised. It can be very costly and time-consuming to obtain permission to publicly disclose these identifiers.

We are aware of several initiatives to develop publicly available, internationally recognized standards for identifying instruments and entities.[10] For example, the Dodd-Frank Act established the Office of Financial Research ("**OFR**") to improve the quality of financial data available to policymakers and facilitate more robust and sophisticated analysis of the financial system. The OFR is also seeking to coordinate with market participants and other regulators, including the Commission, to support the development of a Legal Entity Identifier ("**LEI**") system by an internationally recognized standard-setting body.

Given the current challenges with the existing identifier systems and the strong possibility that an internationally recognized LEI system may be introduced in the next few years, MIS believes that NRSROs should not be required to use CUSIPs, ISINs or CIKs in their XBRL file, provided that they use some kind of identifier system sufficient to identify the rated obligor and obligation. We believe that it is unnecessarily burdensome to require NRSROs to add and populate data fields with identifiers that they do not already use, may become obsolete in a few years, and/or require NRSROs to pay a fee for the use of the identifiers.

D. Location of Rating Performance Information on the NRSRO's Website

If adopted as proposed, paragraph (i) of proposed rule 17g-1 will require an NRSRO to make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of its corporate internet website. Likewise, paragraph (b)(1) of proposed rule 17g-7 will require an NRSRO to publicly disclose for free on an easily accessible portion of its corporate internet website the prescribed XBRL rating history data file. In the Request for Comment, the Commission states that it believes that an NRSRO will meet the "easily accessible" test in these two rules if the information can be accessed through a "clearly and prominently labeled hyperlink" on the homepage of the NRSRO's corporate website.

MIS recognizes the importance of making regulatory disclosures easily accessible to interested persons. As a practical matter, however, there are competing demands regarding the placement of information on the NRSRO's homepage. For example, regulators in other jurisdictions may require CRAs to make other types of information accessible from the homepage. The more information that is crowded onto the homepage, the less useable the website becomes. MIS believes that the objectives of rules 17g-1(i) and 17g-7(b)(1) can be achieved if the NRSRO includes on its homepage a prominent link to a generic and comprehensive category of data, such as "Regulatory" or "Regulatory Disclosures", with links to items such as Form NRSRO, the XBRL rating history data file and other disclosures required by regulations accessible from the "Regulatory" or "Regulatory Disclosures" webpage.

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[10] John Bottega and Linda Powell, "Creating a Linchpin for Financial Data: Toward a Universal Legal Entity Identifier", Federal Reserve Board Finance and Economics Division Series (2011-07).

E. Requirement to Make an Up-to-Date Exhibit 1 Freely Available in Writing

The proposed instructions for Exhibit 1 state that the NRSRO must make its "up-to-date Exhibit 1 freely available in writing to any individual who requests a copy of the Exhibit." The phrase "up-to-date" is somewhat ambiguous. Consider the following example. An NRSRO files its Form NRSRO containing Exhibit 1 on March 15, 2012. On June 30, 2012 it files an updated version of Exhibit 1 with the Commission. On August 31, an individual requests a written copy of the NRSRO's Exhibit 1. We do not believe the Commission intended to require NRSROs to generate a new Exhibit 1 upon request of an individual. We believe the NRSRO is required to provide the individual with a copy of the exhibit it filed with the Commission on June 30, but it is not required to generate a new version of Exhibit 1 in response to the individual's request. To remove any ambiguity in this instruction, we recommend that the Commission replace the phrase "up-to-date Exhibit 1" with "most recently filed Exhibit 1."

F. Monitoring Ratings after Withdrawal

In the Request for Comment, the Commission asks whether it should require NRSROs to monitor an obligor, security or money market instrument after withdrawing a credit rating in order to classify whether the obligor, security or money market instrument went into default or was paid off at a later date. As we noted in a prior comment letter to the Commission, a rating that has been withdrawn is, by definition, a rating that the NRSRO does not monitor. Many rating withdrawals occur because an issuer's debt is fully retired, so that a default is no longer possible.[11] In other circumstances, once a credit rating is withdrawn, MIS typically has limited access to information about the obligation and the issuer.[12] We would not be in a position to certify with confidence that our performance statistics incorporate all defaults with respect to withdrawn credit ratings. Moreover, requiring an NRSRO to monitor entities and obligations even after the NRSRO has announced publicly that it has ceased to do so might constitute regulation of the substance of the NRSRO's rating procedures. For these reasons, we believe that requiring NRSROs to monitor issuers and obligations after a credit rating has been withdrawn is inappropriate.

5. Universal Rating Symbols – Compliance Deadline

If adopted as proposed, paragraph (b) of proposed rule 17-8 might require some NRSROs to change their rating symbol systems or how they apply their symbols to certain categories of obligors or obligations. Some rating symbol systems have been in use for many decades. Private and public sector users of those ratings may have incorporated those symbol systems into information systems, regulatory requirements and written portfolio guidelines. Changing one of these symbol systems, therefore, would require significant lead time so that the NRSRO and users of its credit ratings could prepare adequately for the transition. A rapidly implemented change could adversely affect market participants or the stability of certain segments of the financial system.

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[11] Generally, ratings on bonds with shorter maturities will be withdrawn sooner (because the debt is retired sooner) than they will be for bonds with longer maturities.

[12] This is especially true in jurisdictions where it is difficult for the public to obtain copies of companies' financial statements.

To effect the change, an NRSRO might first seek comment on the proposed changes from market participants and other users of its credit ratings. Once a final decision had been made about the planned changes, the NRSRO might have to make significant changes to multiple information systems, make submissions to other regulators about the planned change, and execute comprehensive processes to facilitate the orderly migration of ratings from one symbol system to another. It also would be particularly important for the NRSRO to give users of its ratings as much notice as practicable so that they could make adjustments to their own information systems and documentation referring to ratings. Policymakers also might need to make changes to ratings-based criteria in regulations and rules. To facilitate an orderly transition, the NRSRO also might decide to use both rating symbol systems at the same time for an interim period to enable users of its credit ratings to make the necessary adjustments. For these reasons, we recommend that the proposed rule provide for an extended compliance deadline of at least twenty-four months from the date the rules are adopted for any change in rating symbols (or the application of those symbols) that an NRSRO is required to make as a result of the proposed rule.