

August 19, 2014

Via email [chairmanoffice@sec.gov](mailto:chairmanoffice@sec.gov), and via Federal Express

Hon. Mary Jo White  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Proposed SEC Rules Regarding Sales and Marketing Activities of  
NRSROs

Dear Ms. White:

This letter is submitted by Kroll Bond Rating Agency, Inc. ("KBRA") to offer additional comments regarding the proposed rules intended to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Please note that KBRA submitted comments on the proposed rules in a letter to the Securities and Exchange Commission (the "Commission") dated August 8, 2011 (a copy of which is attached for your reference). This letter, however, specifically addresses the proposed rules regarding conflicts of interest relating to sales and marketing.

As an introduction, it is worthwhile to explain the effect investment management guidelines maintained by institutional investors in both the public and private sectors have on the market for credit ratings. Technically, investment management guidelines are not regulated by the Commission, but investment guidelines can impose a significant burden on smaller nationally recognized statistical ratings organizations ("NRSROs"). Several pension funds, endowments and other investors still operate under investment guidelines that limit their investment choices to issuances bearing ratings from either Moody's, Standard and Poor's, or Fitch—and in some cases, more than one of them. The result is that smaller NRSROs have a harder time competing in the credit ratings market.

KBRA has devoted extensive effort to meeting with investors and encouraging them to extend their investment guidelines to cover all NRSROs. It has

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made progress: to date, KBRA is aware of at least 11 institutions that revised their investment guidelines to cover all NRSROs, but KBRA has had greater success with investors in the private sector than with public pension funds; two examples of public pension funds that changed their investment guidelines are the New York State Teachers Retirement System and the Employees Retirement System of Texas. In addition, we, in our respective capacities as KBRA's Chief Executive Officer and KBRA's president, as well as several other members of the organization have spoken out in public about the restrictive investment guidelines problem. On June 17, 2011, Mr. Kroll delivered a speech that, among other issues, described the anticompetitive effect restrictive investment guidelines have on the market for credit ratings. Shortly thereafter, former Commission Chairman Mary Schapiro identified this particular problem as an obstacle for the Commission to overcome in its efforts to increase competition in the market for credit ratings. But resistance lingers, and the Commission has not yet taken steps to address the issue.

Thus, the reason for commencing this discussion with a description of the problem restrictive investment guidelines pose for smaller NRSROs was to show how hard smaller NRSROs have to work just to be considered even by users of credit ratings whose investment guidelines permit their ratings to be accepted. If the Commission is considering the implementation a broad prohibition on sales and marketing activities by analysts, the conflict that concerns the Commission might be policed effectively, but at the potential cost of handicapping smaller NRSROs in their ability to compete against the larger NRSROs.

Whereas the largest NRSROs can rely on longevity, and, in some cases, reputation to maintain market share with minimal effort, smaller NRSROs must exert considerable energy to get the opportunity to convince market participants about the value of their ratings, the professional experience and expertise their analysts have in their areas of analytical responsibility, their views about the credit markets, and their perceptions of what a ratings methodology means and how it should be used. Doing so requires smaller NRSROs's analytical staff to be permitted to meet with market participants to showcase their professional abilities and those of the NRSRO for which they work. It requires smaller NRSROs's analysts to be able to take advantage of the networks of professional contacts they have built up through their years in the credit markets to

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introduce users to the advantages of a rating from a newer, smaller NRSRO, or identify business opportunities to a smaller NRSRO's issuer relations team.

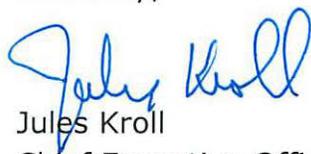
Although KBRA appreciates the Commission's concern about the risk that analysts will be involved in improper commercial conversations, in KBRA's case, the organization maintains effective controls to keep its analysts out of the type sales and marketing activities that should be the Commission's main concern. For example, KBRA analysts are not permitted to discuss or negotiate fees for rating transactions under any circumstances. KBRA analysts and issuer relations staff frequently attend meetings with users of credit ratings together, but the analysts only address credit matters and their superior knowledge of the credit markets; when commercial issues and/or fee discussions arise, the ratings analysts leave the meeting to allow issuer relations personnel to handle the discussions

If the Commission is nonetheless interested in imposing a broad prohibition on sales and marketing activity, absent clear instructions about what sort of activities are not considered sales and marketing, KBRA recommends that the Commission should institute a "safe harbor" for smaller NRSROs that would permit their ratings analysts to engage in limited marketing activity of the types described above for a period of five years following the date on which the proposed rules take effect (or, in the case of NRSROs not in existence on the date the rules are declared effective, five years after the date on which the organization is granted NRSRO status). This would balance the Commission's concern about the conflict that occurs when analytical personnel engage in sales and marketing activities with the need to foster competition in the market for credit ratings. In addition, regardless of the final rules the Commission ultimately adopts, we hope that that the Commission's staff, in applying the rules during the examination process, will be instructed to take note of the different business reality in which smaller NRSROs operate and the need to recognize the importance of applying proportionality in the staff's approach to analyzing the business practices of the smaller NRSROs.

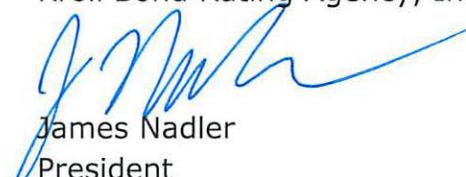
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Thank you for giving us the opportunity to provide our comments. We hope you find them useful and that you will give them due consideration. Please call us at ( [REDACTED] ) (Jules Kroll) or ( [REDACTED] ) with any questions that you might have or to discuss this matter further at your convenience.

Sincerely,



Jules Kroll  
Chief Executive Officer  
Kroll Bond Rating Agency, Inc.



James Nadler  
President  
Kroll Bond Rating Agency, Inc.

ccs:  
Hon. Luis A. Aguilar  
Hon. Daniel M. Gallagher  
Hon. Michael S. Piwowar  
Hon. Kara M. Stein  
Thomas Butler, Director, Office of Credit Ratings