December 14, 2009

By Electronic Mail (rule-comments@sec.gov)

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

Re: Concept Release on Possible Rescission of Rule 436(g) Under the Securities Act of 1933, Release Nos. 33-9071, 34-60798, IC-28943; File No. S7-25-09 (Oct. 7, 2009)

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("SIFMA")[1] Credit Rating Agency Task Force (the "Task Force")[2] is pleased to have the opportunity to comment, on behalf of SIFMA, on the *Concept Release on Possible Rescission of Rule 436(g) Under the Securities Act of 1933* (the "Release") issued by the Securities and Exchange Commission ("SEC" or "the Commission").

[1] SIFMA brings together the shared interests of more than 650 securities firms, banks, and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while reserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington, DC, and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. More information about SIFMA is available on its website at *www.sifma.org*.

[2] The Task Force is a global, investor-led industry member task force formed to examine key issues related to credit ratings and the credit rating agencies. It is comprised of 37 individuals from the US, Europe, and Asia and includes asset managers, underwriters, and issuers. The Task Force members include experts on structured finance, corporate debt, municipal debt, and risk. It has been noted by the President's Working Group on Financial Markets (the "PWG") as the private-sector group to provide the PWG with industry recommendations on credit rating matters. More information on the Task Force, including a roster of Task Force members, can be found at *www.sifma.org/capital_markets/cra-taskforce.shtml*.

The Task Force recognizes the importance to global financial markets of both the quality of Nationally Recognized Statistical Rating Organization "(NRSRO") ratings and investor confidence in such ratings. The Task Force supports efforts by the Commission to address issues relating to NRSRO ratings as set forth in this Release and the *Credit Ratings Disclosure Release*[3] and the *References to Ratings of Nationally Recognized Statistical Rating Organizations Release.*[4] Indeed, the question of NRSRO liability is timely and some increase in liability may provide greater protection to investors. Task Force discussions have, however, highlighted that our financial industry participants are not yet able to uniformly support either the removal or maintenance of the existing exemption under Rule 436(g) of the Securities Act of 1933 (the "Securities Act"). We are uniform in our desire to proceed with caution given that the elimination of the protections under Rule 436(g) could have a profound impact on investors and the capital markets. We, with the rest of the market place, hope that any changes to NRSRO liability will not result in unintended consequences that may serve to counteract other reform efforts.

We believe that there is a common desire in the industry to hold credit rating agencies more accountable for their ratings but some members of the Task Force expressed the view that expert liability may not be the appropriate avenue to achieve that accountability. Some have suggested that perhaps the focus should more squarely fall on accountability under a disclosure regime for both initial and ongoing ratings changes. Indeed, as you can see from the Task Force's letter responding to the *Credit Ratings Disclosure Release*,[5] the Task Force fully supports the Commission's efforts to require more fulsome disclosure relating to credit ratings issued by credit rating agencies including NRSROs. Implementing accountability under a disclosure regime for both initial and ongoing ratings changes would put the focus more squarely on whether rating agencies have properly disclosed inputs, assumptions, and other relevant data to put those ratings in proper context, the effect of which would be more valuable to investors than an alternative approach that simply leads to broad and perhaps unfounded future skepticism about the integrity of the rating agency process or the accuracy in general of ratings themselves. Failure to meet requirements for higher accountability may in the end be worthy of imposition of greater liability. More discussion is needed to explore the alternatives and the effects of any liability regime on the financial marketplace as a whole.

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[3] Release Nos. 33-9070, 34-60797, IC-28942; File No. S7-24-09 (Oct. 7, 2009).

[4] Release Nos. 33-9069, 34-60790, IA-2932, IC-28940; File Nos. S7-17-08, S7-18-08, S7-19-08 (Oct. 7, 2009).

[5] *See* Letter from Sean C. Davy of SIFMA to Elizabeth M. Murphy on the Commission's *Credit Ratings Disclosure Release*, dated December 14, 2009.

Moreover, Congress is now considering, in at least two bills, a number of issues that would directly affect credit rating agencies, including the imposition of liability on NRSROs.[6] We believe that a thoughtful process, such as the Commission's and Congress' efforts, is necessary in considering how potential credit rating agency liability will affect investors and the capital markets.

Impact on Capital Markets

As acknowledged in the Release, it is impossible to know how NRSROs will react to the rescission of Rule 436(g). It is possible that NRSROs may accept the chance of liability with little or no change to their current businesses. On the other hand, the rescission of Rule 436(g) may cause NRSROs to make significant changes to their businesses that could have a significant impact on the market. For example, some or all NRSROs may decide to withdraw from the credit ratings business or they may be less likely to rate securities issued by new or smaller issuers because those issuers would not have sufficient histories for NRSROs to draw upon in their ratings methodologies. In addition, NRSROs may refuse to provide consent to registrants to include rating statements as part of registration statements, which would, in effect, prohibit registrants from using ratings in marketing securities. If NRSROs were to act in these or other ways, capital raising efforts may be hindered and this could be detrimental to the economy and the public.

In addition, assuming that rating agencies provide consent to the use of their ratings in registration statements under Section 7 of the Securities Act, it is possible that agencies will provide more conservative ratings with shorter time horizons. This would be especially true with new product structures or industries. This could affect the cost of obtaining credit ratings or affect the decisions of registrants of whether to raise capital in registered or unregistered offerings.[7]

The Task Force further notes that the rescission of Rule 436(g) may reduce competition among rating agencies. As stated by the Commission, there currently are 10 NRSROs and three of those issued 93 percent of ratings in 2007. While some of those NRSROs may decide that the potential imposition of liability for their ratings is acceptable in the context of their specific business models, others may decide to withdraw from the ratings business because the risk of liability is unacceptable. Other firms may decide not to register as NRSROs for the same reason.

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6 *See The Accountability and Transparency in Rating Agencies Act*, H.R. 3890, and *Restoring American Financial Stability Act of 2009*, Senate Committee on Banking, Housing, and Urban Affairs (Nov. 19, 2009).

7 The Task Force notes that rescission of Rule 436(g) quite probably will result in more legal actions against credit rating agencies and, if a court questions a credit rating agency's model or methodology in determining a credit rating, then the model or methodology for similar transactions will be called into question.

The Task Force is concerned that any decrease in the number of NRSROs will have a negative effect because issuers will have fewer options in their capital raising efforts.

Accordingly, while the Task Force does not oppose the rescission of Rule 436(g), we urge the Commission to fully consider the implications for the capital markets.

Impact on Investors

The Task Force primarily is concerned with the protection of investors. As discussed in the Task Force's letter supporting the principles underlying the Commission's *Credit Ratings Disclosure Release*, we believe that robust disclosure of the scope and limitations of credit ratings as well as conflicts of interest will allow investors to determine whether ratings are credible and independent. Greater disclosure also should provide investors with greater confidence in the integrity of the markets. We are less certain whether the rescission of Rule 436(g) will further investor interests. While it is true that giving investors the ability to hold NRSROs responsible for their rating might give investors more confidence in credit ratings, it might also cause investors to place greater reliance on ratings. It also is possible that the rescission of Rule 436(g) would result in more investor-pay ratings that retail and small institutional investors would not have access to and that could disadvantage such investors. A further possibility is that NRSROs will charge registrants more for credit ratings and that cost could be passed onto investors. As a result of these potential issues, the Task Force believes that the Commission should further explore alternatives to rescinding Rule 436(g) and should move forward with requiring appropriate disclosures.

Impact on Issuers

Assuming that NRSROs are experts under Section 11 of the Securities Act, we note that it is likely that NRSROs will charge registrants more and this cost could be prohibitive to new or smaller issuers. It also could result in more private placements of securities. In addition, the rescission of Rule 436(g) possibly could hamper innovation of new financial products if NRSROs are reluctant to provide ratings because any such new products do not have performance histories.

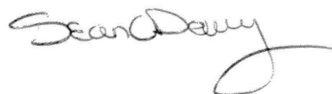
Obtaining and Filing Consents

Assuming that NRSROs provide consent under Section 7 of the Securities Act to use of their ratings in registration statements, the Task Force believes that registrants will be able to adapt their practices in preparing registration statements. We recommend that the Commission allow registrants at least six months to prepare for any changes because registrants will need time to create effective processes to obtain and file credit rating agency consents. The Task Force further agrees with the Commission's suggested methodology for obtaining and filing consents.

Conclusion

The Task Force appreciates the opportunity to comment on the Commission's Concept Release. We support the efforts by the SEC to improve investor protection as it relates to credit rating agencies but urge the Commission to consider whether the rescission of Rule 436(g) would have unintended consequences that could negatively affect the financial markets and investors.

Very truly yours,



Sean C. Davy
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