



May 22, 2018

Mr. Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

RE: Petition for Rulemaking to require financial reports from obligors under Section 314(a) of the Trust Indenture Act of 1939

Dear Mr. Fields:

The Credit Roundtable¹ respectfully petitions the Securities and Exchange Commission (the “Commission”) to adopt rules and regulations under the Trust Indenture Act of 1939 (the “TIA”) to promote a baseline of disclosure for all issuers of registered bonds under TIA qualified indentures.² These rules and regulations should require such issuers to provide the indenture trustee with financial statements in substantially the same form and timeliness of an issuer’s reporting obligations under the Exchange Act, regardless of whether that issuer remains subject to the Exchange Act reporting requirements.

Introduction

Section 314(a)(1) of the Trust Indenture Act of 1939³ (the “TIA”) specifies that issuers who sell bonds under a TIA qualified indenture are required to file financial reports with the indenture trustee pursuant to their filing obligations under Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”).⁴ TIA Section 314(a)(2) further states that if that issuer is not required to file financial reports with the Commission under the Exchange Act, they are still required to file financial reports with the indenture trustee “in accordance with rules and regulations prescribed by the Commission.”

¹ Formed in 2007, The Credit Roundtable (“CRT”), organized in association with the Fixed Income Forum, is a group of large institutional fixed income managers including investment advisors, insurance companies, pension funds, and mutual fund firms, responsible for investing more than \$3.8 trillion of assets. The Credit Roundtable advocates for creditor rights through education and outreach and works to improve fixed income corporate actions, ineffective covenants, and the underwriting and distribution of corporate debt. Its mission is to improve risk assessment and management through education and seeks to benefit all bond market participants through increasing transparency, market efficiency, and liquidity.

² Many indentures governing publicly-held debt securities are “qualified” under the TIA for securities law reasons, and these trust indentures are therefore subject to section 316(a).

³ 15 U.S.C. §§ 77aaa–77bbbb

⁴ 15 U.S.C. § 78a et seq.

Despite Section 314(a)(2) specifically empowering the Commission to set rules and regulations that establish a baseline of issuer reporting, the Commission has not adopted any such rules and regulations. Instead the Commission has provided guidance to the public regarding this issue,⁵ noting that “Sections 314(a)(1)-(a)(3) of the Trust Indenture Act do not require an obligor that is not required to file reports with the Commission under Section 13 or Section 15(d) of the Exchange Act to file information with the trustee, Commission or holders because the Rules described in such Sections have never been adopted.”⁶

As the Commission’s guidance states, the TIA imposes no independent reporting obligations for issuers who are no longer Exchange Act filers, even though debt securities issued under TIA-qualified indentures remain outstanding. Accordingly, investors in securities issued under TIA-qualified indentures are left with the risk that they may not receive financial reports in respect of the issuer of those securities. This risk primarily manifests in bonds that are not guaranteed by a parent after the issuer ceases to be an Exchange Act filer; for example, if an issuer is an Exchange Act filer and is subsequently acquired, yet the acquiring entity does not provide a cross-guarantee of the issuer’s outstanding bonds.

Issuers have successfully exploited this regulatory loophole in order to cease providing financial reports to bondholders. A case in point is Columbia Pipeline Group (“CPG”), which was an Exchange Act filer and an issuer of registered bonds under a TIA-qualified indenture prior to being acquired by TransCanada. After the acquisition closed, CPG ceased being an Exchange Act filer. In addition, TransCanada did not provide a guarantee of CPG’s then-registered bonds. To date, CPG has not provided any financial reports to the trustee of its bonds despite requests from bondholders to do so, and because the TIA’s baseline reporting requirement does not (but in our opinion should) capture this situation.

While TransCanada’s actions can be construed as adhering to the letter of the law, the Credit Roundtable believes that this strays far from the spirit and intent of the Trust Indenture Act to promote disclosure. The absence of rules and regulations (called for under the TIA) to address this situation speaks to the Commission’s mission to “protect investors, [and] maintain fair, orderly, and efficient markets.”⁷

It bears noting that the Exchange Act is a disclosure statute, and a concern in the TIA is also disclosure. The guiding principle behind SEC-registered securities is to provide disclosure and transparency, including relevant and timely information required by current bondholders to properly monitor their investments. The absence of Commission provided rules and regulations for reports under TIA section 314(a) mean that this principle of disclosure is not being met in all cases, to the detriment of investors and the market more broadly.

Although many indentures require contractually negotiated reporting standards, nearly all registered bonds include only the boilerplate TIA language in respect of reporting obligations. There is no meaningful way for investors to seek better contractual reporting obligations from issuers, which is why we are requesting that the baseline of reporting

⁵ See: <https://www.sec.gov/divisions/corpfin/guidance/tiainterp.htm>, Question 107.01

⁶ Id.

⁷ See: <https://www.sec.gov/Article/whatwedo.html>

disclosure, which is determined by the TIA, be set to a level that meets investors' expectations.

Rulemaking Proposal

We respectfully ask that the Commission finalize a rule that requires issuers who are not Exchange Act filers but have sold bonds under a TIA qualified indenture that remain outstanding and remain sole obligations of the issuer to provide the indenture trustee with financial statements in substantially the same form and timeliness of its reporting obligations as if that issuer were an Exchange Act filer.

We welcome the opportunity to meet with Commission staff to discuss this matter further. Please contact Cathy Scott at 212-224-3083, or cathy.scott@iimemberships.com, with any questions or to arrange a meeting with the Credit Roundtable.

Kind Regards,



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