

**Before the
Securities and Exchange Commission
Washington, D.C. 20549**

Definition of Nationally Recognized
Statistical Rating Organization

)
) Release Nos. 33-8570; 34-51572;
) IC-26834; File No. S7-04-05
)

**Comments of the
United States Department of Transportation**

Introduction

On April 25, 2005, the Securities and Exchange Commission (“SEC” or “Commission”) formally proposed to define the term “nationally recognized statistical rating organization” (“NRSRO”). 70 Fed. Reg. 21306. This term has long been used to refer to what are commonly known as credit rating agencies. It has been employed in a wide variety of contexts, including Federal law, but apparently has never been defined by the Federal government. The SEC intends to “increase transparency” among users of NRSROs by its proposal. *Id.* The United States Department of Transportation (“DOT” or “Department”) is one such user, and we submit this comment not in pursuit of any particular outcome, but simply in order to increase the Commission’s understanding of the true breadth of programs potentially affected by this proceeding.

DOT Programs

The SEC accurately notes that Congress has incorporated the term “NRSRO” into a wide range of Federal legislation. *Id.* at 21307, note 11. Specifically included in that range is the Transportation Equity Act for the 21st Century (“TEA-21”), Pub. L. 105-178,

112 Stat. 107 (1998), a statute that affects several of the Department's component agencies. NRSROs are also sometimes involved in a financial guarantee program operated for the benefit of U.S. marine interests by DOT's Maritime Administration ("MarAd").

A. TIFIA

Section 1503 of TEA-21 establishes the Transportation and Infrastructure Finance and Innovation Act ("TIFIA"). *See* 23 U.S.C. §§181-189. TIFIA is a Federal transportation credit program that provides direct Federal loans, lines of credit, and loan guarantees to large-scale transportation projects of national or regional significance under criteria developed by Congress. TIFIA requires, *inter alia*, that any applicant for credit assistance include a "preliminary rating opinion letter from at least one rating agency indicating that the project's senior obligations have the potential to achieve an investment-grade rating." 23 U.S.C. § 182(b)(2)(B).¹ TIFIA defines "investment-grade rating" as a rating in any investment-grade category issued by a "rating agency," which in turn is specifically defined as an organization identified by the SEC as a "Nationally Recognized Statistical Rating Organization." 23 U.S.C. § 181(3), (11).

Pursuant to the statute, DOT officials at times discuss the credit risks of various TIFIA projects with analysts of the NRSROs selected by TIFIA applicants.² After DOT approves an application for TIFIA credit assistance, it then negotiates a definitive credit

¹/ Following enactment of TEA-21, DOT learned that NRSROs did not commonly issue "preliminary rating opinion letters." Accordingly, shortly thereafter DOT staff worked closely with analysts of Moody's, Standard & Poor's, and Fitch (at the time, the only NRSROs) to ensure that these documents contained the information and embodied the analysis required under the statute.

²/ 23 U.S.C. § 183(a)(3) requires DOT to consult with the Office of Management and Budget as well as each rating agency that has provided a preliminary rating opinion letter when determining "an appropriate capital reserve subsidy amount for each secured loan."

agreement with the borrower. By the time such agreements are executed, the borrower must have an investment-grade rating from an NRSRO. 23 U.S.C. § 183(a)(4).

Generally, TIFIA obligors issue senior debt sold in the capital markets, and in such cases it is that debt for which the statute requires an investment-grade rating; TIFIA assistance would be in the form of a subordinated loan. In a few cases, however, there is no debt senior to the TIFIA facility, and in those instances the TIFIA loan will be the senior debt and, under the statute, must itself have an investment grade rating. Such a rating may or may not be published by an NRSRO.³

B. Title XI Program

Title XI of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. §§ 1271 *et seq.*), authorizes MarAd to issue guarantees of the outstanding principal and interest of obligations issued in the private marketplace by (1) companies seeking to construct, reconstruct, or recondition U.S. or foreign flag vessels at shipyards in the U.S., or (2) U.S. shipyards installing advanced shipbuilding technology. 46 App. U.S.C. §§ 1274, 1279e.

In the course of this program MarAd must evaluate the creditworthiness of applicants and the economic soundness of proposed projects. Neither MarAd nor the applicants under this program are legally required to use NRSROs, but these agencies nonetheless sometimes play an important role in this program. For example, in the

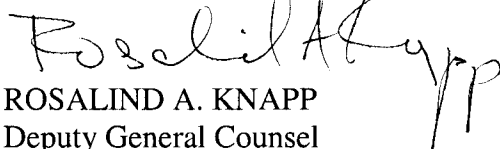
^{3/} The TIFIA provisions cited above pertain to extension of credit assistance in the form of either direct loans or Federal guarantees of private market loans. When DOT provides lines of credit under TIFIA, NRSROs there have a similar role to that discussed above for direct loans and loan guarantees. *See, generally*, 23 U.S.C. § 184, Lines of Credit.

course of identifying and resolving troubled projects, or in arriving at the ultimate terms and conditions of a Title XI project, MarAd may consult with NRSROs to determine the strength of financial institutions or other guarantors.

The Department's Position

DOT does not express any view on the merits of the Commission's proposal. Rather, the Department simply seeks by this comment to inform the SEC of the role of NRSROs in DOT credit programs. DOT relies upon the credibility of their ratings in the TIFIA program; NRSROs thus have a direct effect on the credit quality of the TIFIA facility as well as on the credit subsidy set aside for the credit as required under the Federal Credit Reform Act of 1990.⁴ NRSROs also sometimes assist in the identification of appropriate projects and the determination of relevant financial terms in extending Federal aid to the domestic shipbuilding industry. We ask that the SEC keep these considerations in mind as it deliberates in this proceeding.

Respectfully submitted,


ROSALIND A. KNAPP
Deputy General Counsel

⁴/ See, generally, 2 U.S.C. § 661a.