



SECURITIES AND EXCHANGE COMMISSION
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DIVISION OF MARKET REGULATION

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: File Number S7-04-05 – Definition of Nationally Recognized Statistical Rating Organization

Dear Mr. Katz:

Fidelity Management & Research Company (“Fidelity”) thanks the Securities and Exchange Commission (the “Commission”) for the opportunity to comment upon the proposed rule, under the Securities Exchange Act of 1934 (the “Exchange Act”), to define the term “nationally recognized statistical rating organization” (“NRSRO”). Fidelity supports the Commission’s goal of providing clarity to investors by proposing this definition.

Fidelity, through its Fixed Income Division, manages approximately \$400 billion in investment grade bond mutual funds, money market mutual funds and other fixed income accounts. Fidelity’s managed assets include approximately \$250 billion invested in money market mutual funds governed by Rule 2a-7 of the Investment Company Act of 1940 (“Rule 2a-7”). In its role as investment adviser, Fidelity acts as a fiduciary for approximately 20 million shareholders.

As the Commission notes in the release proposing the rule, Fidelity, by submitting a comment letter to Commission proposals and providing testimony at Commission hearings, has actively participated in the efforts of the Commission to determine the appropriate level of regulation for the credit rating agencies.¹ Fidelity believes that the Commission plays a vital role in overseeing credit rating agencies.

The proposed rule reflects extensive research and thoughtful deliberation on the part of the Commission. As mentioned above, Fidelity generally supports the Commission’s effort to increase clarity on whether a credit rating agency is an NRSRO. Fidelity incorporates by reference the letters and testimony cited above and asks the Commission to consider the following additional comments in connection with the promulgation of final rules.

¹ Securities and Exchange Commission, Definition of Nationally Recognized Statistical Rating Organization, Release Nos. 33-8570, 34-51572, 70 Fed. Reg. 21306 (April 25, 2005), footnotes 20, 45 & 64. See also, Fidelity’s comment letter to the International Organization of Securities Commissions (“IOSCO”) regarding IOSCO’s proposed Code of Conduct Fundamentals for Credit Rating Agencies (available at http://www.iosco.org/pubdocs/pdf/IOSCOPD177_34.pdf).

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New Exchange Act Rule 3b-10 would define, for the first time, the term NRSRO in the regulations of the Commission. The definition of a previously undefined term that is used in numerous rules of the Commission, including Rule 2a-7, should provide clarity to the marketplace.² Fidelity is concerned, however, that the Commission's interpretation and potential application of the new definition will lead to significant confusion for money market and bond investors.

In the proposal, the Commission writes that "[a]n entity that meets the proposed definition would be an NRSRO."³ Fidelity understands this language to mean that the NRSRO process will become self-designating. Such self-designation of NRSROs represents a significant change from current practice. The impact of this change is likely to be confusion for investors regarding which credit rating agencies are, and which credit rating agencies are not, NRSROs.

Under the current no-action letter process, if a credit rating agency earns NRSRO designation, then the Commission makes the relevant no-action letter publicly available. Accordingly, investors know, without question, whether the Commission considers a rating agency an NRSRO.⁴ Furthermore, investors have assurance that the Commission has made a determination that "the rating agency satisfies certain established criteria."⁵ The new self-designation concept under the proposed rule provides no such assurance. Although the term NRSRO will be defined, investors will have to rely on the credit rating agencies to self-police whether their firm meets the criteria set forth in the new definition. Thus, investors will have no protection from the Commission to ensure that credit rating agencies qualify for NRSRO designation.

This protection is particularly important in the money market industry. Rule 2a-7 prescribes that money market mutual funds determine whether a security is eligible for purchase on the basis of whether the security has received a rating from an NRSRO in one of the two highest short-term rating categories.⁶ Yet, under self-designation, money market investors will not be able to rely on the Commission to identify which credit rating agencies are considered NRSROs. Therefore, money market asset management firms may differ in selecting eligible securities because of discrepancies in perception as to which credit rating agencies are NRSROs. This lack of clarity introduces the possibility of market disruption. Investors rely on money market funds to preserve their capital. That reliance is predicated on the regulatory framework created by Commission rules - Rule 2a-7 in particular - and the investment management abilities

² See 70 Fed. Reg. at 21307, footnotes 5, 6, 7 & 8.

³ 70 Fed. Reg. at 21318.

⁴ See e.g., Letter from Mark M. Attar, Special Counsel, Division of Market Regulation, Securities and Exchange Commission, to Arthur Snyder, President, A.M. Best Company, Inc. (March 3, 2005) ("Based on the foregoing, and facts and representations made to the Division in connection with A.M. Best's request, the Division will not recommend enforcement action to the Commission if A.M. Best is considered by broker-dealers to be a 'nationally recognized statistical rating organization' for purposes of applying the relevant provisions of Exchange Act Rule 15c3-1.")

⁵ See *id.*

⁶ 17 C.F.R. 270.2a-7(a)(10)(i).

and reputation of investment advisers. The potential uncertainty created by the proposed rule provides less protection to investors and may raise the risk of a money market fund failing to preserve investors' capital if an asset management firm were to rely on a self-designated NRSRO that would not have earned NRSRO designation if subject to Commission scrutiny.

In response to the Commission's 2003 Concept Release regarding credit rating agencies, Fidelity suggested that "the [Commission] should establish a clearly defined recognition process for obtaining the NRSRO designation."⁷ Specifically, Fidelity argued that such a process "should replace the current no-action letter method and require [affirmative] Commission action."⁸ Fidelity reiterates those positions. Even if the Commission does not endorse Fidelity's position of developing a process that replaces the current no-action letter method for obtaining NRSRO designation, the Commission should at least leave the current process in place to ensure clarity for investors regarding which firms are considered NRSROs under the new proposed definition.⁹ The Commission notes in the release to the proposed rule that "if we were to adopt a definition of NRSRO, we plan to continue to make our staff available to provide no-action letters as appropriate to those entities that choose to seek it."¹⁰ This optional no-action process does not provide sufficient clarity or protection to investors.

Beyond leaving the current no-action process in place, the Commission should go further in its oversight of NRSROs. First, the Commission should condition the maintenance of NRSRO status upon a biennial or triennial examination and re-certification of rating agencies. Although defining the term NRSRO in the regulations of the Commission is a helpful first step in clarifying whether a credit rating agency is an NRSRO, the Commission should monitor the NRSROs and affirm whether each NRSRO continues to meet the definition. Investors do not have the ability to determine whether a firm qualifies as an NRSRO. That role properly belongs with the Commission. Second, the Commission should mandate that NRSROs publish and update their methodology for assigning and reviewing ratings, including specifics by industry, asset classes and structure types. Today, investors, who are required by Commission regulations to use the ratings of NRSROs, can only guess at the methodology NRSROs use to determine ratings. Mandatory publication would create much-needed transparency. Third, the Commission should require NRSROs to publish ratings with a "freshness stamp" that identifies the date of the most recent meeting with issuer management, whether such meeting was at the issuer's offices or elsewhere and the date that a rating was most recently reviewed by a rating committee. Such a "freshness stamp" would protect investors because investors would know whether a rating is a current assessment.

⁷ Letter from Steven C. Nelson, Director of Taxable Money Market Research, Fidelity Investments Money Management, Inc. to Jonathan G. Katz, Secretary (July 25, 2003) (available at www.sec.gov/rules/concept/s71203/snelson072503.htm).

⁸ *Id.*

⁹ Because the proposed definition of the term NRSRO differs from the criteria the Commission has set forth in prior no-action letters granting NRSRO designation, investors will benefit if the Commission requires the five existing NRSROs to apply for no-action relief under the new definition.

¹⁰ 70 Fed. Reg. at 21318.

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Fidelity believes that self-designation will not work. The Commission needs to approve credit rating agencies because of the important role such firms play in the fixed income markets. As noted above, the Commission requires investors to rely on the NRSROs to comply with a variety of regulatory requirements. The credit rating agencies are not paid by or in any way controlled by investors, so investors must look to the Commission to provide oversight and appropriate protection to ensure the reliability and integrity of ratings that NRSROs provide.

Once again, Fidelity appreciates the opportunity to comment on the proposed rule to define an NRSRO under the Exchange Act. If you or your staff have any questions with regard to our views, please contact me at 603-791-7795 or Nancy Prior, Assistant General Counsel, at 603-791-6308.

Very truly yours,



Charles S. Morrison

Money Market Group Leader