



March 15, 2007

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

Re: Oversight of Credit Rating Agencies as Nationally Recognized Statistical Rating Organizations (File No: S7-04-07).

Dear Ms. Morris:

Financial Executives International's¹ ("FEI") Committee on Corporate Finance ("CCF") appreciates the opportunity to comment on the Securities and Exchange Commission's proposed rulemaking² implementing the Credit Rating Agency Reform Act of 2006³ (the "Act"). The Commission notes that the Act seeks to address two important issues that have arisen with respect to credit rating agencies. First, the practice of identifying nationally recognized statistical rating organizations ("NRSROs") through no action letters has been criticized as a process that lacks transparency and creates a barrier to entry for credit rating agencies seeking wider recognition and market share. Second, the importance of credit ratings to the financial markets has raised the question of whether greater supervision of credit rating agencies is warranted.

CCF has commented extensively on these issues, both in prior comment letters⁴ to the Commission and in testimony⁵ before the Senate Banking Committee. We remain convinced that specifying the criteria by which credit rating agencies can register with the

¹ Financial Executives International is a professional association representing the interests of more than 15,000 CFOs, treasurers, controllers, tax directors, and other senior financial executives from over 8,000 major companies throughout the United States and Canada. FEI represents both providers and users of financial information.

² Securities and Exchange Commission Release No. 34-55231, 72 F.R. 6378 et. seq.

³ Pub. L. No. 109-291 (2006).

⁴ Comment letter to the Securities and Exchange Commission submitted July 25, 2003 in response to Concept Release (File No: S7-12-03).

⁵ Hearing on Assessing the Current Oversight & Operation of Credit Rating Agencies before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (March 7, 2006).

SEC will increase competition in the credit rating market, and that increasing accountability of the rating agencies will help issuers make more informed choices.

Given the broad scope of the current rulemaking, we will focus our comments on the issues that are of greatest interest to our group. These include eliminating – or at least, mitigating – conflicts of interest, and curbing abusive practices in the credit rating marketplace.

The Act addresses the issue of conflicts of interest by requiring each NRSRO to “establish, maintain, and enforce” written policies and procedures to address and manage any conflicts of interest that can arise from such business.⁶ The Act further directs the Commission to issue final rules *to prohibit, or to require the disclosure of* (emphasis added), conflicts of interest relating to

- the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;
- the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;
- business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;
- any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating; and
- any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.⁷

The Commission addresses these new statutory requirements by creating two distinct categories of conflicts: the first covers those conflicts that arise from services commonly provided by credit rating agencies and requested by issuers. Such services will continue to be permitted so long as the credit rating agency publicly discloses them. The second type of conflict arises from all other services which credit rating agencies should not be allowed to offer clients they rate, and will therefore be prohibited from offering.

The CCF strongly supports the Commission’s interpretation of these new statutory requirements, particularly with regards to pre-credit rating assessments. The Commission clearly recognizes the importance of such assessments, not only to the credit rating agencies that offer them, but to issuers who may wish to purchase them. While we commend the Commission for allowing credit rating agencies to continue offering certain

⁶ 15 U.S.C. 78o-7(h)(1).

⁷ 15 U.S.C. 78o-7(h)(2)(A)-(E).

services so long as they are disclosed, we would like to stress that public disclosure of “acceptable” services should remain general in nature, and should not identify specific issuers purchasing such services.

Pre-credit rating assessments remain of critical importance to the corporate community. In the regular course of doing business, issuers often hire rating agencies to analyze and explain the rating effects of various corporate actions. Our members have repeatedly stressed the importance of preserving such the option of purchasing such assessments since they are a valuable tool in analyzing the pros and cons of a significant business decision.

The Act addresses another important topic – how to curb abusive practices in the credit rating industry – by directing the Commission to prohibit the following practices if the Commission determines they are unfair, coercive, or abusive:

- Modifying or threatening to modify a credit rating or otherwise departing from systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with such organization.⁸

The Commission has concluded that such actions would be unfair, coercive, and/or abusive, and has proposed a straightforward solution to the problem: an NRSRO would be prohibited from issuing or threatening to issue a credit rating that is lower than would result from using its methodology for determining credit ratings based on whether the issuer or obligor pays for the credit rating or any other service or product of the NRSRO and its affiliates.⁹

The CCF fully supports the Commission’s sensible interpretation of the Act’s requirements on this matter. We have repeatedly urged both Congress¹⁰ and the Commission¹¹ to take whatever steps necessary to eliminate such abusive practices. Our initial thought was that a simple, bright-line rule (similar to the restrictions included in Title II of the Sarbanes-Oxley Act) would effectively bifurcate ratings services from non-ratings services, and would thereby mitigate potential conflicts of interest and help curb abusive transactions. While we remain convinced that a bright-line rule would be the best approach to this matter, we believe that the proposed regulatory language prohibiting

⁸ 15 U.S.C. 78o-7(i)(1)(C).

⁹ 72 F.R. 6399

¹⁰ Hearing on Assessing the Current Oversight & Operation of Credit Rating Agencies before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (March 7, 2006).

¹¹ Comment letter to the Securities and Exchange Commission submitted July 25, 2003 in response to Concept Release (File No: S7-12-03).

credit rating agencies from varying from their established methodologies in awarding such ratings may prove equally effective.

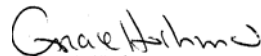
One other issue of great importance to our group is the ongoing oversight of NRSROs to ensure that they continue to satisfy the criteria necessary for initial registration with the SEC. In our comment letter¹² dated July 25, 2003, we urged the Commission to place greater weight on the operational assessment of each rating agency, and to do so on a regular basis, not just during the initial recognition process. We argued that the NRSRO process is self-fulfilling in the sense that those agencies awarded NRSRO status will inevitably become the entities that are most widely recognized in the marketplace. We concluded that the NRSRO status of each rating agency should be reviewed on a periodic basis (every 3-5 years) to ensure that it continues to satisfy the operational assessment criteria.

The Act requires that a credit rating agency complete an exhaustive application process before it can be registered as an NRSRO with the SEC. The application process includes an ongoing certification requirement which mandates that each NRSRO provide an annual certification (along with performance statistics) confirming that its initial application information remains accurate.¹³

The Commission responded to this statutory language by developing application Form NRSRO, and by including specific annual certification requirements.¹⁴ While we commend both Congress and the Commission for addressing the issue of ongoing qualifications, we nevertheless believe that a more proactive “audit” process would better ensure that credit rating agencies operating under the NRSRO designation continue to satisfy rigorous operational and performance standards.

CCF appreciates the opportunity to comment on this proposed rulemaking, and would be pleased to meet with representatives from the Commission to discuss any of these items further. Should you have any questions regarding our comments, please contact Mark Prysock at 202-626-7804.

Very truly yours,



Grace L. Hinchman
Senior Vice President
Financial Executives International

Cc: The Honorable Christopher Cox
The Honorable Paul S. Atkins

¹² Ibid at page 3.

¹³ 15 U.S.C. 78o-7(b)(2)(A).

¹⁴ 72 F.R. 6387

The Honorable Roel C. Campos
The Honorable Anne Nazareth
The Honorable Kathleen C. Casey