



July 25, 2008

Jill M. Peterson
Assistant Secretary
Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

**Re: Proposed Rules for Nationally Recognized Statistical Rating Organizations.
File Number S7-13008.**

Dear Assistant Secretary Peterson:

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on the Securities and Exchange Commission's (SEC) proposed amendments and addition to its regulations (Proposal)² governing nationally recognized statistical rating organizations (NRSRO). The Proposal would impose additional NRSRO disclosure requirements, establish procedures to avoid NRSRO conflicts of interest, and require a unique ratings identifier or detailed methodology report for structured finance products. MBA endorses the SEC's efforts in the Proposal to increase transparency and reliability with respect to credit ratings. We also request the SEC decline to issue the proposed new rule that would require ratings for structured finance products to have a unique identifier or detailed methodology report.

Background

Beginning in 2007, the dramatic increase in delinquency and foreclosure rates for subprime mortgage loans in the United States created turmoil in the markets for residential mortgage-backed securities (MBS) backed by such loans and collateralized debt obligations linked to such securities. This turmoil rapidly spread into the

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 370,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

² 73 Fed. Reg. 123; 36212-36252 (June 25, 2008).

commercial mortgage-backed securities market (CMBS), when the sharp drop-off in investor and borrower demand curtailed the amount of CMBS issuance despite the strong performance of commercial and multifamily mortgages. As the performance of subprime securities continued to deteriorate, their credit ratings were downgraded by the NRSROs most active in rating them. The NRSROs' performance in rating these structured finance products raised questions about the accuracy of their credit ratings generally as well as the integrity of the ratings process as a whole. However, such questions were not raised for other categories of structured securities, such as CMBS and asset-backed securities (ABS) whose ratings were primarily stable or improving over this timeframe.

In response to these events, in August 2007, the SEC initiated an extensive examination of the role of certain NRSROs in the subprime market turmoil. The Proposal was developed and issued based on the findings of the examination. Among other things, the Proposal is intended to curb credit ratings-related practices that contributed to recent disorder in the credit market. For example, the SEC anticipates the Proposal will encourage NRSROs to verify the quality of the assets underlying the structured products they rate. Additionally, the SEC expects the Proposal to discourage investors from relying on the credit ratings of investment products in lieu of performing more substantive analysis.

Due Diligence/Transparency/Confidentiality

The Proposal would require the disclosure of information and methods used by NRSROs to assign, monitor and revise credit ratings. MBA supports the SEC's efforts to increase transparency and reliability of MBS and CMBS credit ratings. We also endorse elements of the Proposal that would provide more information to investors so that they can make informed investment decisions. By providing a basis for investors to have a better understanding of MBS, MBA believes the enhanced transparency may increase confidence in the MBS market.

Nevertheless, MBA recommends that the SEC consider whether requiring complete disclosure of all rating agency information for a structured security would jeopardize the ability of rating agencies to obtain confidential qualitative assessments of a security's underlying assets. Servicers and special servicers have raised concerns regarding the public disclosure of confidential qualitative information. If confidential qualitative information utilized in the initial ratings and surveillance processes were required to be made public, the communication of such information would be greatly reduced because this information and its source(s) were never intended to be publicly disclosed. The rating agencies would no longer be able to utilize this information in their ratings and surveillance processes, which could potentially have a negative impact on rating accuracy. For example, qualitative information about an asset's quality, strengths and weaknesses is obtained by rating agencies through conversations with various parties involved in the securitization. Such information may not be apparent in the information provided to perform a quantitative analysis of the asset.

In the case of a CMBS, a special servicer expects its conversations with a rating agency to be confidential if they are about issues regarding the forced sale of a CMBS asset. These conversations typically address the special servicer's best estimate of the sale transaction, including timetable and price. This information would be one of the factors used by a rating agency to evaluate if a ratings action is required. If this type of information were required to be publicly disclosed, special servicers would be reluctant to provide it. As a result, rating agencies would be forced to wait until the information became available through public channels. Such a time lag would negatively impact the ability of rating agencies to incorporate real time asset pricing information into their ratings action.

MBA also has confidentiality concerns with respect to the Proposal's requirement for NRSROs to maintain records of complaints submitted about a credit analyst's performance. While we do not dispute the importance of tracking and substantiating analysts' performance, we request that the SEC consider whether the requirement, as proposed, is open to abuse. We further request that the Proposal be modified to include a requirement for NRSROs to establish appropriate firewalls and safeguards to protect the identity and other personal information of the analyst and the complainant.

Conflicts of Interest

MBA endorses the components of the Proposal that address conflicts of interest. Currently, section 240.17g-5 of the SEC's regulations includes a list of conflicts in which NRSROs are permitted to engage so long as the conflict is reported to the SEC. The list includes the conflict associated with providing both credit ratings and other services to the same entity for compensation. The section also includes a separate list of conflicts that are prohibited entirely. The Proposal would add to the "prohibited list" the conflict of maintaining credit ratings of an obligor or security and making recommendations about the security's characteristics to the same obligor or securities issuer.

MBA concurs that undue pressure may arise in situations where, in addition to providing ratings, an NRSRO provides other services to the issuer/obligor. However, MBA believes the Proposal may be difficult to implement because of the overlapping characteristics of the two conflicts mentioned above.

MBA also recognizes that determining an investment product's credit rating is often an interactive process between the issuer and rating agency in which the impact of the inclusion or exclusion of various loan pools or portions thereof are examined in terms of their impact on the potential ratings of the RMBS or CMBS offering. These discussions allow the issuer to modify the loan pool being securitized in order to achieve the most efficient securitization execution. MBA requests the SEC to provide clear guidance on the distinctions between permitted discussions about scenario analyses or securitization

pool composition and discussions about a pool's legal structure or other advisory issues that would be prohibited under the Proposal.

Structured Finance Symbol

The Proposal would also require NRSROs to differentiate between the ratings issued on structured finance products from those they issue on bonds. Compliance with this requirement would be demonstrated by either using different symbols for structured finance products versus other securities, or issuing a report disclosing the differences between ratings of structured products and other securities.

MBA notes that structured finance transactions are an important segment of capital markets. Such transactions contribute to market efficiencies and improve risk management, hedging, and cash flow allocations. They also provide a direct benefit in the housing finance system by providing mortgage lenders more access to capital through securitized markets. This, in turn, enables borrowers to benefit from lower mortgage interest rates.

According to the SEC, the Proposal is an attempt to help ensure that investors fully appreciate the different risk characteristics of structured products, particularly under stress conditions. The SEC also expects the Proposal to alert investors that structured product ratings rely on qualitatively different kinds of information and ratings methodologies than do ratings for bonds.

MBA disagrees that a different rating symbol is the appropriate method to convey information of this scope and depth. Moreover, it is likely that the Proposal could reinforce the very behavior it seeks to extinguish. For example, the sudden appearance of a new rating symbol might prompt investors to shy away from structured finance products simply because of their rating, thereby preempting the more detailed analysis advocated in the Proposal.

MBA also notes that the Proposal would require the new rating symbol to be attached to all structured securities regardless of their recent or long-term performance. Such a symbol would brand all structured securities as a single asset category, despite the fact that different structured securities exhibit markedly different performance characteristics (e.g. CMBS, RMBS, and securities backed by credit card debt or automotive loans). This could spawn greater investor confusion because a wide variety of securities would be lumped into an equally broad investment category. Consequently, the performance of a single type of structured security might be attributed inaccurately to other structured security products due to their shared product identifier.

Another reason why MBA opposes a separate structured finance product symbol is because the performance of a security is primarily attributable to the performance of its underlying assets, not its structure. The use of a structured ratings symbol could be perceived as a broad cautionary signal when in fact the underlying assets determine the

securitization's risk parameters. As a consequence, such a symbol would potentially steer investors away from security types that have demonstrated very strong performance records, such as CMBS.

MBA is also concerned that the effectiveness of the structured finance ratings symbol would be diluted because of the market's level of sophistication. If market participants attribute negative implications to the structured finance ratings symbol, issuers are likely to develop alternative investment vehicles in order to avoid the symbol's stigma.

MBA also questions why only structured finance products would receive a unique identifier or be required to have an accompanying report that provides a detailed methodology description. If the purpose of the Proposal is to increase information transparency for structured securities through the introduction of a detailed report of the structured securities rating methodology, it is likely that such a report would also be highly valuable to purchasers of non-structured securities. Moreover, these rating methodologies are widely publicized by NRSROs. Therefore, requiring these same methodologies to be included in the securitization offering would be redundant to information that is already publicly available.

MBA also requests that the SEC consider whether the Proposal will perpetuate the current liquidity shortages in the housing and commercial finance markets. If enacted, the Proposal would force institutional investors to modify their lists of permissible investments. The Proposal would also necessitate amendments to federal and state laws, regulations and supervisory guidance in order for them to comport with the new ratings framework. The Proposal is also likely to instigate unnecessary short-term disruptions as institutional investors determine what their obligations are relative to the structured finance products they currently hold. This, in turn, could further depress liquidity in the market for structured products.

An additional concern with this component of the Proposal is its redundancy with the Proposal's NRSRO disclosure requirements. As mentioned above, the Proposal would require NRSROs to disclose information they use to assign and monitor credit ratings, including their rating methods. MBA believes these disclosure requirements obviate the need for a separate ratings symbol. If, as the SEC asserts, the Proposal is intended to help make clear that structured product ratings rely on qualitatively different kinds of information and ratings methodologies than do ratings for bonds, MBA believes this would be accomplished through disclosure of NRSRO ratings methods.

For these reasons, MBA requests the SEC withdraw the proposed requirement for NRSROs to differentiate the ratings they issue on structured products from those they issue on non-structured bonds.

Transparency Asymmetry for Structured and Non-Structured Securities

The Proposal also establishes new disclosure requirements specific to structured securities. MBA believes these enhanced disclosure requirements will significantly increase the amount of publicly available information for each structured security product category. However, because the Proposal does not require similar disclosure requirements for non-structured securities, asymmetry would develop between information regarding structured and non-structured securities. Such informational asymmetry could foster market distortions in the securitization market. Therefore, MBA strongly recommends that the same disclosure requirements be applied to structured securities and non-structured securities. As stated above, MBA supports the concept of greater information transparency for rated securities but does not believe such an objective can be met by excluding enhanced information disclosure requirements from non-structured securities.

Maintain Consistent Supervisory Requirements for all NRSROs

MBA believes that compliance and enforcement are facilitated in an environment where all NRSROs are subject to a single statutory and regulatory framework. MBA is concerned that recent state-level enforcement actions run counter to this approach.

Specifically, the June 5, 2008 agreement (Agreement) between the New York State Attorney General and three NRSROs (Moody's Investors Service, Inc., Fitch, Inc, and Standard and Poor's) creates distinct rating agency requirements for three of the ten existing NRSROs. Moreover, the Agreement only relates to ratings for residential MBS, whereas the Proposal governs all structured securities. Summarized below are the elements of the Agreement and how each element relates to the Proposal:

- Fee Reforms –
 - Agreement: The three credit rating agencies must establish a fee-for-service structure and be compensated regardless of whether the investment bank ultimately selects them to rate a RMBS. The three NRSROs must make fundamental changes to their business models.
 - Proposal: The “ratings shopping” concern is addressed by requiring the public disclosure of all data utilized to rate a security.
- Disclosure Reforms –
 - Agreement: The three credit rating agencies must disclose information about all securitizations submitted for their initial review.
 - Proposal: Information must be disclosed only about securities in which a formal rating was issued.
- Loan Originator Review –
 - Agreement: The three credit rating agencies must establish criteria for reviewing individual mortgage lenders (known as originators), as well as the lender's origination processes. The credit rating agencies must review and evaluate these loan originators and disclose their originator evaluations on their websites.

- Proposal: Not addressed.
- Due Diligence Reforms –
 - Agreement: The three credit rating agencies must develop criteria for the due diligence information that is collected by investment banks on the mortgages comprising an RMBS. The credit rating agencies must receive loan level results of due diligence and review those results prior to issuing ratings. The credit rating agencies must disclose their due diligence criteria on their websites.
 - Proposal: NRSROs must disclose the efforts that are undertaken to review loan level information. It does not require the development of due diligence processes or the review of results prior to issuing a rating.
- Credit Rating Agency Independence –
 - Agreement: The three credit rating agencies must perform an annual review of their RMBS business to identify practices that could compromise their independent ratings. They must remediate any practices that could compromise independence.
 - Proposal: An NRSRO must electronically report all rating actions taken on all rated securities it rates and prepare a confidential financial performance report for the SEC.
- Representations and Warranties –
 - Agreement: The three credit rating agencies must require representations and warranties from investment banks and other financially responsible parties about the loans underlying the RMBS.
 - Proposal: Not addressed.

MBA is concerned that the Agreement unnecessarily distorts the NRSRO competitive and supervisory landscape because it does not apply to all NRSROs. MBA requests that the SEC rectify this situation in a manner that minimizes the regulatory burden of all NRSROs.

An additional concern is that ad hoc agreements with state governmental authorities will promulgate rating agency requirements that violate the Credit Rating Reform Act of 2006 (Act).³ The Act includes a provision that prohibits the SEC and state or other regulatory authorities from regulating the “substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings.”⁴

In the Agreement, the provisions regarding Due Diligence Reforms, Credit Rating Agency Independence, and Representation and Warranties mandate the creation of “criteria” or “requirements” that specifically address ratings procedures. This brings into

³ PL 109-291.

⁴ Section 4(c)(2); PL 109-291.

question whether state level “enforcement actions,” which are permitted under the Act, supersede the prohibition on states and the SEC from regulating “procedures.” At a minimum, the Proposal should require that all NRSROs operate under the same regulatory framework at both the state and federal levels in accordance with the Act.

Conclusion

MBA recognizes the pivotal role that NRSROs play in the housing finance system by making assessments about financial services providers and financial instruments used in the secondary mortgage market. Ratings represent one of the many evaluation factors that should be assessed when purchasing a rated security. However, because of the importance that ratings play in the capital markets, MBA believes NRSROs and their ratings methodologies must be held to exacting standards. Therefore, MBA endorses efforts to increase transparency, reduce misrepresentations, improve investor access to underlying mortgage pool characteristics and securities’ performance data, and reduce potential conflicts of interest among rating agencies and others in the industry. MBA believes the Proposal is based on these similar objectives but would be improved with the modifications suggested above. MBA also reiterates our concern that a required identifier for structured securities would cause disruption and informational disparities in the securities market.

Please contact Michael Carrier, Associate Vice President of Secondary and Capital Markets, to further engage MBA on these issues. Mr. Carrier can be reached by phone at (202) 557-2870 or email at mcarrier@mortgagebankers.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Kieran P. Quinn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kieran P. Quinn, CMB
Chairman