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July 25, 2008

Via E-Mail

Florence Harmon, Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: S7-13-08 - Proposed Rules for Nationally Recognized Statistical Rating Organizations

Dear Acting Secretary Harmon:

We appreciate the opportunity to comment on the U.S. Securities and Exchange Commission's ("SEC" or "Commission") proposed rules governing Nationally Recognized Statistical Rating Organizations ("NRSROs") ("NRSRO Proposing Release").[1] Rating and Investment Information, Inc. ("R&I") generally supports the Commission's efforts to address concerns about the integrity of NRSROs' credit rating procedures and methodologies, however, for the reasons described below, R&I disagrees with and/or requests clarification of certain required elements of the proposed rules.

A. Proposed Rule 17g-5(a)(3) and (b)(9)

Proposed Rule 17g-5(a)(3) and (b)(9) would require that NRSROs who issue or maintain "a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument" disclose "the information provided to the NRSRO and used by the NRSRO in determining the credit rating … through a means designed to provide reasonably broad dissemination of the information" ("Proposed Rule 17g-5(a)(3) Disclosures").[2] The Commission has also provided guidance as to the necessary timing of the Proposed Rule 17g-5(a)(3) Disclosures for public, private and offshore offerings.

1. Offshore Offerings

Offerings by foreign issuers to non-U.S. persons are not subject to the U.S. federal securities laws. In the Commission's proposed guidance regarding the appropriate timing of the Proposed Rule 17g-5(a)(3) Disclosures, however, the Commission has provided guidance as to the timing of such disclosures for offshore offerings. Consequently, it appears that the Commission is not proposing to limit the Proposed Rule 17g-5(a)(3) Disclosures to offerings involving U.S. persons.

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[1] See Securities Exchange Act Release No. 57967 (June 16, 2008), 73 FR 36212 (June 25, 2008) ("NRSRO Proposing Release").

[2] See NRSRO Proposing Release at 36219.

R&I believes that requiring Rule 17g-5(a)(3) Disclosures for offshore offerings is beyond the purview of the federal securities laws as such offerings are made to non-U.S. persons outside of the U.S. Furthermore, if NRSROs were required to make the Rule 17g-5(a)(3) Disclosures for offshore offerings, it would raise numerous questions, including the requisite language of the Proposed Rule 17g-5(a)(3) Disclosures and if English translation of such disclosures would be necessary. NRSROs would not be able to translate the Proposed Rule 17g-5(a)(3) Disclosures from the language of the NRSRO's home country into English in an expeditious manner.

The application of the Proposed Rule 17g-5(a)(3) Disclosures to offshore offerings can also conflict with the business practices surrounding the structured finance markets of other countries. For example, approximately 50% of structured finance products rated by R&I are undisclosed and approximately 20% of such products are subject to limited disclosure in accordance with the requirements of Basel II, as described below. Such structured finance products are undisclosed or subject to only limited disclosure for business reasons (e.g., preventing competitors or clients of the originator of the structured finance product from learning the details and record of securitization of the originator's structured finance products).

The undisclosed nature of structured finance products is not limited to those rated by R&I, as such undisclosed structured finance products are common across Japan. In the Bank of Japan's ("BOJ") Report on the Workshop on Securitization, the BOJ indicated that private issues of structured finance products increased at that time.[3] Although the Japanese Financial Services Agency ("JFSA") requires the credit ratings used by banks to calculate the risk weight of structured finance products to be publicly available pursuant to the Basel II framework, it limited the requisite disclosures to twelve basic items, such as the name of the transaction, issue amount, final maturity date, types of underlying assets and the subordination ratio, for those structured finance products subject to Basel II, in recognition of the undisclosed nature of structured finance products in Japan.[4] Due to the implementation of the JFSA's limited disclosure requirements for those structured finance products subject to Basel II, 20% of the structured finance products rated by R&I are now subject to limited disclosure.

If Rule 17g-5(a)(3) is adopted by the Commission, as proposed, R&I would be forced to withdraw its existing ratings, which it has a responsibility to monitor for the benefit of the investors, in order to comply with Rule 17g-5(a)(3). If R&I did not assign new ratings, or if it withdrew its existing ratings due to its inability to comply with the Proposed Rule 17g-5(a)(3) Disclosures, it could cause great damage to the structured finance markets in Japan, and would deprive corporations of smooth funding opportunities and investors of legitimate investment opportunities. Consequently, R&I could be forced to withdraw from its registration as an NRSRO in certain classes, which is contrary to the Commission's intent in developing the

[3] See "Report on the Workshop on Securitization," Bank of Japan (April 22, 2004) (available at: http://www.boj.or.jp/en/type/release/zuiji/kako03/mpo0405a.htm).

[4] See "Basel II: International Convergence of Capital Measurement and Capital Standards: a Revised Framework," p. 565(b) (June 2004).

registration process for NRSROs. For the reasons stated above, R&I respectfully proposes that offerings which satisfy the requirements of Regulation S be explicitly exempted from the Proposed Rule 17g-5(a)(3) Disclosures.[5]

2. Proposed Safe Harbor

The Commission has asked whether they "should … provide a "safe harbor" so that an NRSRO that obtained a representation from one or more parties to a transaction to disclose the required information would not be held in violation of the rule if the party did not fulfill its disclosure obligations under the representation."[6]

Proposed Rule 17g-5(a)(3) requires disclosure of the information provided to an NRSRO by an issuer, underwriter, sponsor, depositor or trustee and "used by the NRSRO in determining the credit rating."[7] The Commission has not specified the party that would need to disclose the information, however, "an NRSRO would violate the proposed rule if it issued a credit rating for a structured finance product where the information is not disclosed notwithstanding any representations from the arranger that the arranger would make the requisite disclosures."[8] The originator, however, is generally the party that would be in a position to decide whether to disclose such information or not. R&I respectfully proposes that the Commission propose a safe harbor that would permit NRSROs to be able to obtain a representation from the originator that the requisite Proposed Rule 17g-5(a)(3) Disclosures would be disclosed and that the NRSRO would not be held in violation of the rule if the originator did not fulfill its obligations under the representation.

B. Proposed Rule 17g-5(c)(5)

Proposed Rule 17g-5(c)(5) would "prohibit an NRSRO from issuing a credit rating with respect to an obligor or security where the NRSRO or a person associated with the NRSRO, as defined in Section 3(a)(63) of the Exchange Act, made recommendations to the obligor or the issuer, underwriter, or sponsor of the security … about the corporate or legal structure, assets, liabilities, or activities of the obligor or issuer of the security."[9]

1. Subjective Consultants

As noted by the Commission in the NRSRO Proposing Release, R&I believes that the line between providing feedback during the rating process and making recommendations about how

[5] Regulation S is a safe harbor that specifies certain circumstances under which offerings are deemed to be offshore offerings, and therefore not subject to the U.S. securities laws.

[6] See NRSRO Proposing Release at 36221.

[7] See NRSRO Proposing Release at 36219.

[8] See NRSRO Proposing Release at 36219.

[9] See NRSRO Proposing Release at 36226.

to obtain a desired rating may be difficult to clearly delineate. Consequently, R&I believes that it would be difficult for the Commission to enforce such a provision.

Oftentimes, when rating a structured finance product, certain processes may appear to be recommendations when, in fact, all market participants are treated impartially and the resulting feedback serves as a benefit to investors. For example, credit rating agencies will sometimes be asked to review documents in connection with an issuance of securities in order to advise the issuer if the agreements qualify for rating. A credit rating agency will sometimes identify problems with the agreements, as well as the reasoning behind the problems. Credit rating agencies may also propose specific amendments to the part in question in order for it to satisfy certain rating criteria. Such proposed amendments, however, are general in nature and a legitimate part of the rating process and do not result in a credit rating analyst becoming a "subjective consultant." Offering suggestions to an issuer or originator of a structured finance product can result in an issuer or originator reducing the credit risk of a product, which will naturally benefit investors.

2. Managing Conflict v. Prohibiting Conflict

The Commission has asked whether "this type of conflict [is] one that could be addressed through disclosure and procedures to manage it instead of prohibiting it … [and] rather than prohibiting it, add this type of conflict to the list of conflicts in paragraph (b) of Rule 17g-5, which, under paragraph (a) of the rule, must be addressed through disclosure and procedures to manage them."[10]

R&I respectfully proposes that the conflict described in proposed Rule 17g-5(c)(5) be added to Rule 17g-5(b), which would require disclosure of the conflict and procedures to manage the conflict. R&I believes that NRSROs could manage the conflict of interest in proposed Rule 17g-5(c)(5) by implementing internal procedures to delineate and manage permissible feedback to issuers.

3. Guidance Regarding Recommendations

The Commission has noted that "the line between providing feedback during the rating process and making recommendations about how to obtain a desired rating may be hard to draw in some cases," and asks whether "the Commission [should] specify the type of interactions between an NRSRO and the person seeking the rating that would and would not constitute recommendations for the purposes of this rule."[11]

Since the difference between feedback and recommendations can be difficult to distinguish, R&I believes that it would be helpful to NRSROs if the Commission provided guidance on what does and does not constitute recommendations. By publishing guidance on what does and does not constitute a recommendation, NRSROs would be better able to manage the conflict of interest.

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[10] See NRSRO Proposing Release at 36226-27.

[11] See NRSRO Proposing Release at 36227.

C. Proposed Rule 17g-5(c)(7)

Proposed Rule 17g-5(c)(7) would "prohibit an NRSRO from having a conflict of interest relating to the issuance or maintenance of a credit rating where a credit analyst who participated in determining or monitoring the credit rating, or a person responsible for approving the credit rating, received gifts, including entertainment, from the obligor being rated, or from the issuer, underwriter, or sponsor of the securities being rated, other than items provided in the context of normal business activities such as meetings that have an aggregate value of no more than $25."[12]

It is unclear whether the proposed rule would except items provided in the context of normal business activities with an aggregate value of $25 per meeting or $25 per person attending such meetings. R&I believes that it would be appropriate to except items with an aggregate value of $25 per person attending such meetings. R&I respectfully proposes that the Commission clarify that Rule 17g-5(c)(7) would except items provided in the context of normal business activities with an aggregate value of $25 per person per business meeting or other normal business activity. R&I also respectfully proposes that the Commission specifically state that proposed Rule 17g-5(c)(7) would except normal business activities with an aggregate value of $25 per person, or, based on the country in which an NRSRO mainly conducts its business, the currency equivalent of $25 per person.

D. Proposed Rule 17g-2(a)(8) and (d)

Proposed Rule 17g-2(a)(8) and (d) would require NRSROs "to make and retain record[s] showing all rating actions (initial rating, upgrades, downgrades, and placements on watch for upgrade or downgrade) and the date of such actions identified by the name of the security or obligor and, if applicable, the CUSIP for the rated security or the Central Index Key (CIK) number for the rated obligor" ("Proposed Rule 17g-2(a)(8) Disclosures").[13] Such information would need to be made publicly available on the NRSRO's web site "in an interactive data file that uses a machine-readable computer code that presents information in eXtensible Business Reporting Language ("XBRL") in electronic format ("XBRL Interactive Data File")".[14]

1. Rating Action Disclosures

R&I generally supports the Commission's Proposed Rule 17g-2(a)(8) Disclosure requirements regarding current rating actions, however, as discussed above, due to the business considerations of originators, approximately 50% of structured finance products rated by R&I are undisclosed. Consequently, credit rating agencies cannot unilaterally disclose a rating. Permission to disclose such credit rating actions lies with the person who contracts with the credit rating agency (e.g., issuers or originators (in the case of structured finance products)). If the Commission adopts Rule 17g-2(a)(8) as proposed, NRSROs in Japan would not be able to comply with the Proposed

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[12] See NRSRO Proposing Release at 36227.

[13] See NRSRO Proposing Release at 36228.

[14] See NRSRO Proposing Release at 36228.

Rule 17g-2(a)(8) Disclosures with respect to rating actions for new undisclosed structured finance products, as well as those being monitored. This conflict would not only affect R&I, but also other Japanese NRSROs. Should R&I not assign new ratings to, or withdraw existing ratings of such structured finance products in order to comply with the Proposed Rule 17g-2(a)(8) Disclosures, it would cause great damage to the structured finance market in Japan, which in turn would deprive corporations of smooth funding opportunities and investors of legitimate investment opportunities. R&I respectfully proposes that undisclosed structured finance products be exempted from the Proposed Rule 17g-2(a)(8) Disclosure requirements.

2. Method of Data Disclosure

The Commission has asked whether the "six-month delay before publicly disclosing a rating action [is] sufficiently long to address the business concerns of the subscriber-based NRSROs and the issuer-paid NRSROs…[and whether] the delay should be for a longer period such as one or two years or even longer…."[15]

Although R&I generally supports the Proposed Rule 17g-2(a)(8) Disclosure requirements, such information, when compiled as a database, has certain commercial value. R&I currently makes such historical rating actions available to paid subscribers ("Historical Database"). The Commission noted in the NRSRO Proposing Release that "the NRSRO would be permitted to disclose the record on its Internet Web site six months after the record is updated to reflect a new ratings action…[and that] the proposed six month time lag for publicly disclosing the updated record is designed to accommodate NRSROs that operate using the subscriber-pay model because they are paid for access to their current credit ratings."[16] If R&I, and other NRSROs who utilize a subscriber-pay model, were forced to make the Proposed Rule 17g-2(a)(8) Disclosures available to the public free of charge, as proposed, R&I's and other similarly situated NRSROs' business would be negatively affected. Although R&I primarily utilizes an issuer-pay model, it believes that preserving the subscriber revenue derived from the Historical Database and other services is very important since the subscriber business strengthens R&I's fundamentals. Alternative sources of income beyond issuers reduce the reliance on income derived from issuers and therefore reduces the potential for conflicts of interest.

Many of R&I's subscribers process the data available via the Historical Database statistically, on a daily basis, to update the rating information of the securities they own, produce annual rating transition matrices and/or produce default rates. R&I respectfully proposes that the Commission either not adopt proposed Rule 17g-2(a)(8) or lengthen the time under which such disclosures would need to be made. If the Commission extended the timing of the Proposed Rule 17g-2(a)(8) Disclosures to longer than three years after the date of the rating action, R&I believes that the Proposed Rule 17g-2(a)(8) Disclosures would not negatively affect the database sales business of NRSROs. R&I also believes that the Commission should limit the length of the disclosure period. R&I respectfully proposes that in such cases where a rated security is redeemed or a rated obligor withdraws its rating, NRSROs should be able to cease disclosing

[15] See NRSRO Proposing Release at 36229.

[16] See NRSRO Proposing Release at 36229.

data regarding such redeemed securities or withdrawn obligors one month after such redemption or withdrawal.

3. XBRL Interactive Data File

R&I believes that it would need approximately one year after the adoption of the proposed rules in order to create an XBRL Interactive Data File. R&I respectfully proposes that the Commission grant NRSROs a period of one-year after adoption of the proposed NRSRO rules, in which to turn its database of rating actions into an XBRL Interactive Data File.

4. CUSIP and CIK codes

The Commission has proposed that NRSROs disclose certain information with respect to credit rating actions by the name of the security or obligor and, if applicable, the CUSIP or CIK number for the rated obligor. The Commission has asked whether there are "other identifiers in addition, or as an alternative, to CUSIP or CIK number that could be used in the rule."[17]

The International Securities Identification Number ("ISIN") is more frequently used internationally than the CUSIP or CIK number for rated obligors, and it is also a common identifier of securities in Japan. R&I rates very few securities that carry a CUSIP or CIK number. Since R&I believes that the intent of using a CUSIP or CIK number is to allow investors to identify the rated securities, R&I believes that such purpose can also be fulfilled by using the ISIN code. Requiring the use of a CUSIP or CIK number would be extremely burdensome for non-U.S. NRSROs as (a) non-U.S. NRSROs, including R&I, use ISIN codes for recording purposes and (b) license fees are required to use CUSIP numbers. R&I respectfully proposes that NRSROs be permitted to use codes, which are standard identifiers of the securities rated in the country or region in which an NRSRO mainly conducts its business, as an alternative to CUSIP and CIK numbers. For example, in addition to ISIN codes, R&I also identifies rated obligors listed on any of the Japanese stock exchanges by codes issued by the Securities Identification Code Committee of Japan, which allows investors to easily identify obligors.

E. Proposed Rule 17g-2(a)(2)(iii)

Proposed Rule 17g-2(a)(2)(iii) would require NRSROs to "add an additional record that would be required to be made for each current credit rating, namely, if a quantitative model is a substantial component in the process of determining the credit rating, a record of the rationale for any material difference between the credit rating implied by the model and the final credit rating issued."[18]

R&I believes that the determination as to whether a quantitative model is a "substantial component" of a credit rating should remain with the NRSRO as it varies depending on the types

[17] See NRSRO Proposing Release at 36229.

[18] See NRSRO Proposing Release at 36230.

of securities rated or the rating methodologies. R&I respectfully proposes, however, that the Commission provide a definition of what would constitute a "material difference" between a credit rating implied by a quantitative model and the final credit rating issued.

F. Proposed Rule Instruction For Exhibit 1 on Form NRSRO

The proposed amendment to the instructions for Exhibit 1 on the Form NRSRO would require "the disclosure of separate sets of default and transition statistics for each asset class of credit rating for which an applicant is seeking registration as an NRSRO or an NRSRO is registered and any other broad class of credit ratings issued by the NRSRO."[19]

R&I generally supports the Proposal Rule Instruction for Exhibit 1 on Form NRSRO and understands the utility of comparing performance measurement statistics across NRSROs. R&I, as a registered NRSRO, has been making positive efforts towards enhancing its disclosure of performance measurement statistics, including in compliance with the NRSRO rules. There may be some classes of credit ratings, however, where the number of samples may not be large enough to be statistically significant for purposes of performance measurement statistics, which in turn may mislead market participants. For example, R&I only has approximately 10 issuers with the same credit rating at the same time in certain classes of ratings, such as "financial institutions, brokers, dealers" or "insurance companies." Therefore, in order to avoid misleading market participants, R&I respectfully proposes that the Commission permit NRSROs to combine two or more classes into an alternative class for purposes of calculating their performance measurement statistics if NRSROs have doubts about the statistical significance for each individual class of credit ratings, as indicated in Item 6 and/or 7 of Form NRSRO.

Please do not hesitate to call me with any questions you might have.

Thank you.

Sincerely yours,

Yasuhiro Harada
Chairman and Co-CEO
Rating and Investment Information, Inc.

cc: Neal E. Sullivan, Esq., Bingham McCutchen LLP
Michael R. Trocchio, Esq., Bingham McCutchen LLP
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[19] See NRSRO Proposing Release at 35232.