Association for Financial Markets in Europe
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September 13, 2011

Submitted via E-mail to rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Murphy,

Solicitation of Comment To Assist in Study on Assigned Credit Ratings

The Association for Financial Markets in Europe ("AFME")[1] is pleased to submit these comments regarding the Solicitation of Comment to Assist in Study on Assigned Credit Ratings dated May 16th (the "Solicitation") issued by the Securities and Exchange Commission (the "Commission").

We refer to the letter from our sister organization, the Securities Industry and Financial Markets Association ("SIFMA") dated 13th September 2011 (the "SIFMA Letter") and, as stated below, broadly support the comments made in that letter.

Our response focuses on the key considerations raised by the Solicitation from the perspective of European market participants.

This response has been prepared by a working group of AFME/ESF members comprising issuers/originators, dealers/arrangers and legal advisers. AFME/ESF members also include investors, credit rating agencies, accounting firms and others, but those members have not been involved in preparing or commenting on this response, and so this response may not reflect the views of all AFME/ESF members.

We wish to stress the global nature of the ABS market and the corresponding issues which would arise if the Commission adopted changes which did not take account of the views of non-U.S. market participants and current and proposed regulation of Nationally Recognised Statistical Rating Organisations, also known as credit rating agencies ("NRSROs" or "CRAs", as the case may be) outside the United States, in particular in the European Union. While the Solicitation focuses on U.S. related issues in a number of respects, it is equally relevant in the context of European (and other non-U.S.) originated transactions.

We encourage the Commission to ensure that any changes made to the current disclosure and reporting regime for ABS, including the Solicitation, do not give rise to uncertainty for market participants. We believe that a lack of coordination with other relevant authorities and/or the adoption of unclear requirements, or requirements which conflict with non-U.S. laws, may result in compliance uncertainty. In this regard, we recommend that any final rules adopted by the Commission allow flexibility for non-U.S. originated transactions to accommodate local laws

[1] http://www.afme.eu/

and regulatory initiatives, in particular Regulation 1060/2009 (the "CRA Regulation") which regulates CRAs operating within the European Union.

We would be happy to discuss our response with you at your convenience.

Summary of comments

A summary of AFME's views on the Solicitation follows:

- Our working group members broadly support the comments made in the SIFMA Letter.

- In particular, we share the strong concerns expressed by SIFMA regarding the approach prescribed by Section 939F(d)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act[2] ("Dodd-Frank"): the "Section 15E(w) System".

- We do not believe any of the alternative models on which the Solicitation requests comment are feasible or viable except, in this context and subject as set out below, Rule 17g-5[3]. AFME has previously commented to the European Commission on the pros and cons of different business models for NRSROs.

- Subject to the below, and with regard to applicability in the US market only, we support SIFMA's analysis of Rule 17g-5 in this context. We also echo the support of SIFMA for Rule 17g-5 as a superior alternative to the Section 15E(w) System, because the Rule 17g-5 approach better serves the public interest and the protection of investors for the reasons set out in the SIFMA Letter.

- Scope, and avoidance of extra-territorial effect: we believe it would be harmful to European market participants if any future rulemaking proposed by the Commission following the completion of its analysis were to have effect, deliberately or inadvertently, outside the United States. This would particularly be the case if the Section 15E(w) System were adopted, but would apply to all possible outcomes including an approach based on Rule 17g-5.

- We reiterate our request set out in our letter to the Commission dated 11th November 2010 (the "Rule 17g-5 Exemption Letter") for the temporary conditional exemption from the requirements of Rule 17g-5 for non-U.S. offered transactions to be made permanent.

- In relation to the Solicitation and future rulemaking relating to NRSROs, we urge the Commission to work with European and other non-U.S. regulators to increase consistency and mutual recognition of regulations governing NRSROs, in particular the CRA Regulation, and so to avoid unnecessary burdens and costs created by inconsistent regulatory requirements.

[2] Pub.L. 111-203
[3] 17 CFR 240.17g-5

Comments

1. SIFMA Comments

While our comments below address matters of particular concern to European market participants, our members have also expressed more general concerns as to certain aspects of the Solicitation. Our working group members (comprised primarily of issuers/originators, arrangers and legal advisers) support the comments and recommendations made in the SIFMA Letter, subject to the further comments set out in this response.

2. The Section 15E(w) System

Our comments in this context and in Section 3 below are informed by our response[4] to the European Commission dated 7th January 2011 (the "AFME Submission to the European Commission")[5]. This letter was sent in response to the Public Consultation on Credit Rating Agencies published by the European Commission on 5th November 2010 (the "European Consultation")[6], which sought comment on a wide range of issues concerning the regulation of CRAs, both within the field of structured finance and outside it.

In this context we would like to refer the Commission to Questions 23-30 of the European Consultation, which ask how new players can be encouraged to enter the CRA sector, including whether there is a role for the European Central Bank or other national or governmental authorities to provide credit ratings, or whether a new independent European Credit Rating Agency should be created.

In summary, our response expressed concerns that:

- entrusting public authorities with the task of providing ratings risked competitive distortions and conflicts of interest;
- the EU should not act as a promoter of particular rating agencies or models, particularly where this could distort the market or compromise rating quality; and
- any use of public funding to create a European CRA would compromise the independence of the ratings process and divert resources away from ensuring effective implementation, monitoring and enforcement of the new regulatory framework for existing independent CRAs (i.e. the CRA Regulation).

In some respects, the proposed Section 15E(w) System goes even further than some of the options proposed by the Commission.

Therefore, a fortiori, our concerns expressed in the AFME Submission to the European Commission underlie our support for SIFMA's remarks in the SIFMA letter that, "the market … does not want a centralized, inefficient, and likely ineffective government command-and-control mechanism to allocate initial ratings on securitization transactions." We believe such an approach would damage independence, create its own potential conflicts of interest and raise major practical concerns regarding performance and delivery as set out in the SIFMA Letter.

3. Alternative Models to the Section 15E(w) System

In this context we would like to refer the Commission to Questions 34-36 of the European Consultation, which ask if there could be a distorting influence of a fee-paying issuer over the

[4] Jointly with the British Bankers' Association.
[5] https://circabc.europa.eu/d/d/workspace/SpacesStore/79216467-a07b-48e8-8d11-7684e2a54838/AFME%20-%20BBA%20joint%20response_EN.pdf
[6] http://ec.europa.eu/internal_market/consultations/docs/2010/cra/cpaper_en.pdf

determination of a credit rating, what are the proposed alternatives to reduce conflicts of interest due to this model and which alternatives are the most feasible.

The European Commission proposed a number of different business models some of which correspond to business models proposed in the Solicitation:

- a Subscriber / Investor Pays Model, which corresponds to the User-Pay Model;
- a Payment Upon Results Model, which corresponds in some respects to the Designation Model;
- a Trading Venue Pays Model, which corresponds in some respects to the Stand Alone Model;
- a Government as hiring agent model, which corresponds to the Section 15E(w) System; and
- a Public Utility Model.

In summary, our response was that as with many other business models and industries in which inherent potential for conflict of interest exists, the appropriate response is to ensure that potential conflicts are well managed and subject to regulatory oversight. Experience in practice suggests that "issuer-pays" conflicts can be managed by effective governance structures and successful segregation of functions and information within an entity. We set out examples of CRAs' policies and procedures in place to pre-empt and manage conflicts in Annex 2 to the AFME Submission to the European Commission.

Further, we noted that regulators should not legislate to reduce or prohibit use of the "issuer-pays" model where conflicts can be shown to be managed effectively, and there is no compelling evidence to suggest that alternative models would be more effective. The Klinz Report[7] also noted that "all payment models have flaws or practicability questions which make them difficult to consider as true alternatives".

Our views on the various different alternative models to "issuer-pays" are set out on pages 34-36 of the AFME Submission to the European Commission. Many of them echo and reflect the concerns expressed in the SIFMA Letter. For these reasons we wholeheartedly support SIFMA's concerns regarding the Investor/User Funded, Stand Alone and Designation Models. In our view none of these are viable options and none of them would better serve the public interest and the protection of investors than the current regulation.

4. Rule 17g5

Subject to the below, and with regard to applicability in the US market only, we support the analysis of Rule 17g-5 in the SIFMA Letter. We also echo the support of SIFMA for Rule 17g-5 as a superior alternative to the Section 15E(w) System, because the Rule 17g-5 approach better serves the public interest and the protection of investors for the reasons set out in the SIFMA Letter.

5. Scope, and avoidance of extra-territorial effect

We believe it would be harmful to European market participants if any future rulemaking regarding NRSROs proposed by the Commission following the completion of its analysis were to have effect, deliberately or inadvertently, outside the United States. This would particularly be the case if the Section 15E(w) System were adopted, but would apply to all possible outcomes including an approach based on Rule 17g-5.

[7] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-454.361+01+DOC+PDF+V0//EN&language=EN

The development of further regulation of CRAs within the European Union is continuing, and draft legislation is expected to be published later this year. We have referred extensively to the European Consultation and the AFME Submission to the European Commission, but as of now there is no indication of the shape or content of this new legislation. However, it is expected that the ongoing deliberations of the European authorities will take into account the particular features of the structured finance markets in Europe and corresponding recent ABS rating experience. Application of the Section 15E(w) System in a non-U.S. context may prove disruptive to local markets.

Without careful co-ordination and communication between equivalent policymakers and legislative bodies in the United States and Europe, there is likely to be a mismatch in the requirements introduced with respect to structured finance transaction ratings. In turn, such mismatch is likely to make it difficult for market participants to comply with the various requirements.

We encourage the Commission to clarify the jurisdictional scope of the proposed requirements in respect of the Section 15E(w) System and to ensure that such requirements do not have an effect outside the U.S.

Notwithstanding our support for Rule 17g-5 as the best alternative available as set out in Section 4, and for the avoidance of doubt, we reiterate our request set out in our letter to the Commission dated 11th November 2010 (the "Rule 17g-5 Exemption Letter") for the temporary conditional exemption from the requirements of Rule 17g-5 for non-U.S. offered transactions to be made permanent. The various reasons for the exemption referred to in the Rule 17g-5 Exemption Letter remain relevant.

In particular, we note that a broadly (but not perfectly) similar system to Rule 17g-5 was proposed in Europe towards the end of 2010, and remains under consideration by EU authorities. It is our view that the EU authorities are best placed to assess the regulatory "needs" in respect of the European structured finance markets and to ensure that any adopted requirements appropriately reflect the wider regulatory framework in Europe. As noted in the Rule 17g-5 Exemption Letter, in Europe, compliance with Rule 17g-5 raises significant data protection and bank confidentiality issues under European laws.

Finally, we repeat the statement in the Rule 17g-5 Exemption Letter that U.S. federal securities laws focus on the regulation of offerings to U.S. persons. The Commission has a limited interest in regulating securities offered solely outside the U.S. and this is evidenced by certain existing provisions and practices, including the Regulation S safe harbour and the Goodwin Proctor no-action letters. Therefore, the application of Rule 17g-5 to all credit ratings provided by a NRSRO regardless of whether the relevant structured finance product transaction involves a U.S. investor connection (i.e. via a U.S. offering) is inconsistent with the wider U.S. legislative and regulatory framework.

Since November 2010, a number of AFME members who are European originators / issuers have gained more experience of complying with Rule 17g-5 where this has been necessary as part of an offering into the U.S. Such compliance, while burdensome and adding to cost, has been accepted.

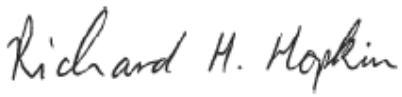
However, where the relevant securities are offered solely outside of the U.S., AFME members continue to believe that a permanent exemption from Rule 17g-5 is appropriate.

In conclusion, in relation to the Solicitation and future rulemaking relating to NRSROs, we urge the Commission to work with European and other non-U.S. regulators to increase consistency

and mutual recognition of regulations governing NRSROs, in particular the CRA Regulation, and so to avoid unnecessary burdens and costs created by inconsistent regulatory requirements.

Thank you for soliciting our comments as part of your Study on Assigned Credit Ratings. We would be pleased to assist the Commission further if required. In particular, if you have any questions or desire additional information regarding any of the comments set out above please do not hesitate to contact the undersigned on + 44 207 743 9375 or by email at richard.hopkin@afme.eu.

Yours sincerely,



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