sifma®

Invested in America

June 3, 2013

Submitted via email to rule-comments@sec.gov

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

RE: SEC Credit Ratings Roundtable, Supplemental Comments; File Number 4-661

Dear Ms. Murphy,

SIFMA[1] sends this supplementary comment letter to provide additional feedback based on the May 14, 2013 Credit Ratings Roundtable ("Roundtable") organized by the Commission. SIFMA was pleased to participate in this important event, and we would like to respond to certain issues discussed there.

SIFMA recognizes the potential conflicts of interest that arise from the current issuer-pays model of credit ratings. The mere presence of a conflict of interest, however, does not imply that there will harms to parties in the transaction. Each model of the credit ratings market presented at the Roundtable, including the one envisioned in section 15E(w), carries with it its own potential conflicts of interests, misaligned incentives, and market distortions. Conflicts will always exist, and must be managed.

SIFMA members support a robust market for credit ratings, one where investors and issuers are free to choose ratings providers as they see fit. We believe this may be best achieved through allowing a level playing field to be developed among NRSROs in a manner that would foster the development of whatever business models the market is willing to support. We do not believe that the heavy hand of government should be applied to limit investor and issuer choice.

1. **The SEC Should Not Implement the 15E(w) Approach But Rather Make a Determination that an Alternative System Would Better Serve the Public Interest and the Protection of Investors**

For the reasons stated in our previous response[2], SIFMA continues to believe that the adoption and implementation of the 15E(w) approach would not solve the problems associated with conflicts of interest in credit ratings for securitization transactions. These reasons include, but are not limited to,

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.
[2] See our September 12, 2011 comment letter, available here: http://www.sec.gov/comments/4-629/4629-9.pdf

- The 15E(w) approach would represent an unprecedented intrusion of government control into a private financial market: it includes fee setting, performance evaluation, etc. The Rating Agency Board ("Board") would direct and centrally control the market for initial credit ratings on structured finance products.
- The 15E(w) approach would run contrary to the direction compelled by other provisions of Dodd-Frank, such as Section 939A which aims to remove ratings from regulation. The 15E(w) approach would entrench credit ratings forever, and provide a government imprimatur that would not serve to reduce reliance.
- The 15E(w) approach would put the Board in a position very close to regulating the form and content of credit rating methodologies, which we do not believe is appropriate. Furthermore, it could negatively lead to homogenization of rating analyses as agencies strive to meet whatever performance criteria are established.
- The 15E(w) approach will not allow securitization markets to function efficiently in the manner that investors and issuers desire. It presumes that any issuer would be able to obtain a rating from any qualified NRSRO, which is not the case, given that some rating agencies' terms of engagement are not acceptable to some arrangers.
- The 15E(w) approach wrongly presumes that an investor would want a rating from any NRSRO deemed to be qualified by the Board. Investors may prefer a particular rating agency or agencies for a variety of reasons, and will require their preferred rating agency or agencies to rate a transaction no matter which agency the Board may assign. Thus the 15E(w) approach will needlessly burden investors and issuers with additional costs.
- SIFMA members are also concerned about the resources the Board would have available, including quality of the expertise of the Board and its staff.
- The 15E(w) approach is not free from conflicts. It could create incentives for rating agencies to lobby Board members in order to obtain increased business. Board members could also have personal interests in firms subject to the authority of the Board. The Board would also be subject to political pressure, and could take actions to satisfy those pressures that distort securitization markets.

We believe the implementation of the 15E(w) approach would have such a significantly negative impact on the functioning of the asset-backed securities markets that the SEC should make a determination that an alternative system would better serve the public interest and the protection of investors.

2. Rule 17G-5 Can Provide Equal Access to Rating Agency Information and is a Better Path Forward; Will Allow Alternative Methodologies to Develop

At the Roundtable, the Commission heard feedback from a number of panelists, including SIFMA, supporting a path forward involving revisions to Rule 17G-5. These changes, which we addressed in our previous submission, could include lowering or eliminating the threshold for unsolicited ratings that is currently based on an NRSRO's use of 17G-5 issuer websites. We reiterate our support for these measures.

The most important point regarding Rule 17G-5 is that the availability of information on these websites should foster any alternative business model that the market will support. This information could be used by an investor-paid, issuer-paid, hybrid, or models-based rating agency.

One discussion point raised on the second panel of the meeting was an expansion of access to information posted on 17G-5 website. Some of the information posted on these websites is confidential information provided by, or regarding obligors on underlying assets in a transaction, and care must be taken to avoid disclosure of such information through decreased confidentiality requirements for non-hired NRSROs. A related issue is whether or not investors should have access to these websites. SIFMA-member investors would strongly support such access; however our sponsor/issuer members have raised concerns. The concerns regard both the confidential nature of some information posted on the websites as well as the iterative nature of the information posted on the websites (e.g., preliminary information).

In both cases we believe that the SEC should further consult the industry before it moves forward with changes to the standards for access to these websites beyond NRSROs. The issues raised are important for both our investor and sponsor/issuer member constituencies and it is important for the industry that both perspectives are considered.

3. SIFMA Does Not Support Mandatory Rotation

A number of speakers at the Roundtable discussed the idea that issuers should be required to rotate rating agencies on their transactions after some period of time. While there has been no specific proposal for rotation in the U.S., our initial view is one of opposition. Similar to the 15E(w) approach, rotation would interfere with the free, informed choice of market participants. Issuers and investors could have no choice but to use an agency they deemed unfit to rate. We do not believe it is the case that rotation will necessarily create new entrants to market, at least not in a way that adds value to market participants. Finally, rotation would at the margin reduce importance of performance to an NRSRO, as an NRSRO will be guaranteed a flow of business regardless of merits

4. Investors Should Not Be Forced to Change Investment Guidelines

Perhaps the most concerning theme among speakers at the Roundtable was the implication that investment guidelines containing references to ratings or to specific rating agencies should be the subject of SEC action to eliminate the references. The view expressed was that these references make it difficult or impossible for new entrants to break in to established markets. We have a number of objections to these proposals.

Investment guidelines serve a purpose. They exist to allow a relatively unsophisticated investor (e.g., a smaller investment fund or separate account) who does not possess the expertise to invest in more complex products to provide guideposts to their professional investment manger as to the general levels of risk to which they desire their funds to be exposed. In the case of state law references, the investment guidelines reflect the desire of states to ensure that retirement and other savings plans are not invested in products deemed to be too risky, and ratings serve as a prophylactic gating mechanism.

In either case, they represent the choice of participants in the market (either the choice of a private fund itself, or the choice of the state who is ultimately responsible for a fund) to provide guidance to their investment managers. These guidelines are *not* what section 939A of Dodd-Frank aims to address – 939A was targeted at Federal government regulations which require the use of credit ratings. Investment guidelines, on the other hand, represent the choice of market participants to limit the risk exposure of funds *for which they are responsible*. While it may be the case that over the course of the last ten years some investors placed far too much reliance on credit ratings, broad mandates or edicts will not solve this problem.

If a rating agency desires to obtain ratings assignments, that agency must convince investors and issuers that its analysis and ratings are cost-effective by proving them to be reliable and credible. A panelist on the third panel spoke to the efforts of his agency to educate potential investors and issuers as to the merits of his agency's methodologies and processes. We believe this is the correct approach for a rating agency to gain market share. It is not the case that the forced removal of investment guidelines would necessarily lead to a wholesale broadening of rating agency usage – investors would still need to understand a rating agency's methodology, models, track record, and personnel. In other words, they have to trust any new agency regardless of the removal of restrictions in investment guidelines.

The SEC should reject any suggestions that it eliminate the ability of investment guidelines to contain references to credit ratings. This is contrary to the protection of investors and more broadly to the free markets which are required for capital formation and job creation.

5. SIFMA Could Support a Licensing/Qualification Regime for Ratings Analysts

SIFMA members would support, at a conceptual level, the construction of a licensing/qualification regime for ratings analysts. Investors and issuers, of course, stand to benefit from well-qualified ratings analysts. However, we would not support a regime that created such requirements or liability that qualified persons were not interested in becoming ratings analysts.

Securities licensing standards could form the most obvious basis of a model; but SIFMA believes that thought should also be given to the establishment of a set of categories where training would be required, and allowance for NRSRO's to design their own training program. The SEC of course, could oversee and examine these programs. An iterative, principles-based process may lead to the best outcome over time.

***

SIFMA is pleased to present these comments to the Commission. We hope they are helpful as the Commission addresses its requirements under Dodd-Frank. Should there be questions regarding this comment letter or a need for more information, please contact me at 212-313-1126 or ckillian@sifma.org.

Sincerely,

Christopher Killian
Managing Director
Securitization

CC: Thomas Butler
AnneMarie Ettinger
Harriet Orol
John Ramsay
Craig Lewis
Katherine Hsu