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BY ELECTRONIC MAIL

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: *File No. S7-04-07*
Proposed Rule: Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations

Dear Ms. Morris:

In letters dated March 12 we submitted our initial comments concerning the Securities and Exchange Commission's ("Commission") proposed rules implementing the provisions of the Credit Rating Agency Reform Act of 2006 (the "Act"), including Proposed Rule 17g-6(a)(4) banning certain unfair, coercive and abusive practices. In consideration of the diverse opinions concerning Proposed Rule 17g-6(a)(4) filed with the Commission since the date of our submission, we take this opportunity to supplement our earlier comments. Taking into account the views expressed by others, we also offer a modified Proposed Rule 17g-6(a)(4), which is attached as Exhibit A hereto, that we believe furthers the Act's objective of increasing transparency, accountability, and competition in the credit rating markets, while simultaneously safeguarding the integrity of ratings, and rating agency methodology and independence of opinion.

Virtually all active market participants (*i.e.*, issuers, asset managers, and investors) commenting on the proposed rules have expressed support for the Commission's proposed ban on the unfair, coercive and abusive practice of "notching." Issuers of securities and money market instruments issued by asset pools, or as part of asset-backed or mortgage-backed securities transactions, have described how notching effectively forces them to invest only in securities that are rated by the rating agencies that they pay to rate their products. The

Association of Financial Guaranty Insurers has described the pressures that compel its members to insure only bonds rated by Moody's Investors Service ("Moody's") and Standard & Poor's ("S&P"). Dominion Bond Rating Service ("DBRS"), another NRSRO significantly affected by notching, has noted that because so many debt instruments find their way into structured products, notching has a ripple effect back to the wider corporate bond universe. At least one commentator has observed that notching is similar to the anti-competitive practice of tying.

Several industry participants have offered modifications to the proposed rule aimed at reconciling the goals of allowing free and fair competition and prohibiting unfair, coercive and abusive practices with the need to maintain rating agency independence. The Securities Industry and Financial Markets Association, for example, in respect of the proposed 85% exemption under Proposed Rule 17g-6(a)(4), has suggested that a NRSRO be subject to a rebuttable presumption that it is acting anti-competitively if it reduces a rating on an asset it has otherwise not rated by more than one notch. In contrast, the Commercial Mortgage Securities Association recommends that the threshold exception be lowered to below 85%. Recognizing that rating certain types of asset classes requires specialized expertise, an asset manager has proposed incorporation of a skills and experience standard in the threshold exception. DBRS has proposed that the threshold percentage exception be modified to permit an NRSRO to refuse to rate or withdraw a rating on a structured product only if the underlying assets are either unrated or rated by a non-NRSRO. Various commentators, including Fitch, also suggest clarifying that Proposed Rule 17g-6(a)(4)'s prohibition on notching encompasses private ratings (or credit estimates) as well as public ratings.

Moody's and S&P continue to support notching as a concept, arguing that to the extent that they rely on other NRSROs' ratings – in respect of certain limited asset categories and then only at severely discounted levels – they do so as an accommodation to securities issuers seeking asset pool ratings. These dominant players claim that the requirement of a level playing field jeopardizes analytic independence. Intent on preserving the status quo, they raise the specter of uniformity of ratings as a reason to allow current unfair practices to continue, and offer no proposal for reducing existing barriers to new entrants. They even go so far as to suggest that if they have not rated an asset, it is solely due to rating shopping.

In fact, there are many reasons other than rating shopping for an issuer to select one NRSRO over another. A credit rating is an evaluation of the creditworthiness of a subject. Credit rating agencies compete on an array of services and products related to, but distinct from, the assignment of credit ratings. For example, an issuer may value a particular NRSRO's responsiveness, open and transparent rating criteria and risk analytics, willingness to engage in constructive dialogue, or innovation and technological developments. It may also value the quality of its presale reports, and the timeliness of those reports. A rating agency's surveillance and monitoring services, and sensitivity and stress testing capabilities, may also be considered important. The enhanced liquidity of the rated security relative to the cost of the rating is another key consideration.

Indeed, the empirical evidence discussed in our March 12 letter concerning Proposed Rule 17g-6(a)(4) strongly suggests that in the area of structured finance, credit rating agencies primarily compete on services. The historical default, transition rate, and rating comparability studies cited in our March 12 letter all indicate that the major NRSROs' ratings of structured finance products are comparable. No commentator has cited any persuasive evidence to the contrary.[1]

We have reflected on the wide array of opinions expressed by market participants, and are mindful that the Act is intended to level the playing field in the credit rating markets while protecting rating accuracy and rating agency independence. In light of these considerations, we propose the attached modified Rule 17g-6(a)(4) as a constructive way forward, consistent with our position that the largest NRSROs should not be permitted to use their market dominance in the traditional debt markets to distort competition in the structured finance credit rating markets.

Under our proposed modified rule, if an NRSRO has rated 66% of the par value of an asset pool, and all assets in the asset pool are publicly rated by two or more NRSROs, for those assets the NRSRO has not itself rated, in rating the pool, the NRSRO is to use one of the two or more public ratings assigned to the underlying asset. If any of the assets not rated by the NRSRO rating the asset pool are not publicly rated by at least two other NRSROs, the NRSRO may refuse to rate, or withdraw its rating on, the pool. By using dual-rated assets as the standard, our proposed modified rule eliminates the risks associated with unrated assets. Further, by specifying that if the NRSRO rating the pool has not rated an underlying asset, one of the two or more public ratings assigned to the asset shall be used, our modified rule eliminates risks associated with single-rated assets rated by new entrants with limited track records. This modified rule also protects against potentially inaccurate or overly optimistic ratings by allowing the NRSRO rating the pool to choose freely among the public ratings on the underlying asset. The rule recognizes that new entrants will need time to develop the specialized expertise required to rate various asset classes, and provides them the opportunity to build expertise through market participation.

NRSROs regularly rely on a range of professional opinions, and financial and other information that they do not independently verify or audit for purposes of assessing credit and assigning credit ratings. Internal bank assessments of credit risks, information provided by corporate officers, financial statements, auditor opinions, and legal opinions are all factored into the rating process. Under our proposed rule, for purposes of rating a pool of assets, credit opinions assigned by other NRSROs to underlying collateral will properly be included as an additional input.

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[1] In its supplemental comment letter dated March 26, 2007, S&P cites an ING report concerning emerging market corporate and sovereign bonds. That study has limited, if any, relevance to the structured finance credit rating markets.

We appreciate the opportunity to offer our further comments on Proposed Rule 17g-6(a)(4) and would be happy to provide additional information that may assist the Commission or the staff in evaluating our proposal.

Very truly yours,

Charles D. Brown

Charles D. Brown
General Counsel

Exhibit A

Proposed New Rule 17g-6(a)(4)

(4) Issuing or threatening to issue a lower credit rating, or lowering or threatening to lower an existing credit rating, or refusing to issue a credit rating or withdrawing a credit rating, with respect to:

(i) securities or money market instruments issued by, or representing an interest in, or which are paid from the proceeds or assets of, an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets which comprise the asset pool or transaction, by ownership or referred value, as applicable, also are rated by the rating organization;

(ii) the claims-paying ability or financial strength of a financial guaranty insurer, unless a portion of the outstanding obligations insured by the financial guaranty insurer also are rated by the rating organization;

except that a NRSRO may elect to refuse to issue a credit rating to, or to withdraw a credit rating from, securities or money market instruments issued by, or representing an interest in, or which are paid from the proceeds or assets of, an asset pool or as part of any asset-backed or mortgage-backed securities transaction, or in respect of the claims-paying ability or financial strength of a financial guaranty insurer, if:

(x) the rating organization has rated less than 66% of the par value of the assets comprising the asset pool or transaction, or of the obligations insured by the financial guaranty insurer; or

(y) fewer than 100% of the assets comprising the asset pool or transaction, or of the obligations insured by the financial guaranty insurer, in the aggregate, have been publicly rated either by the rating organization or two or more NRSROs.

Notwithstanding any other provision of these Rules, in no circumstance may a rating organization, as a condition of rating securities or money market instruments issued by, or representing an interest in, or which are paid from the proceeds or assets of, an asset pool, or as part of any asset-backed or mortgage-backed securities transaction, or as a condition of rating the claims-paying ability or financial strength of a financial guaranty insurer, require that it publicly or privately rate, conduct a credit assessment on, alter its models, procedures or methodologies, or take any other similar action with respect to, any asset comprising the asset pool or transaction, or any obligation insured by the financial guaranty insurer, publicly rated by two or more NRSROs. For any assets the NRSRO has not itself rated, in rating the asset pool or transaction, or rating the claims-paying ability or financial strength of the financial guaranty insurer, the NRSRO shall use one of the existing public ratings of such asset, without revision upward or downward.