5 May 2010

Mr. Randall W. Roy, Assistant Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Amendments to the Rules for Nationally Recognised Statistical Rating Organisations; Rule 17g-5; Requirements for credit ratings in respect of foreign issuer transactions which do not involve a U.S. offering

Dear Mr. Roy,

On behalf of the Association for Financial Markets in Europe / European Securitisation Forum (**AFME / ESF**)[1], we wish to provide comments on certain amendments adopted by the Securities and Exchange Commission (the **Commission**) with respect to the rules governing the conduct of Nationally Recognised Statistical Rating Organisations (**NRSROs**) under the Securities Exchange Act of 1934. In particular, we are seeking an exemption with respect to new Rule 17g-5(a)(3)(iii) (the **Rule**) (i.e. the requirements with respect to websites with arranger-provided information) for credit ratings provided in respect of foreign transactions which involve an offering of a structured finance product to non-U.S. persons only (e.g. an offering under Regulation S of the Securities Act of 1933).

We consider that an exemption for non-U.S. offered transactions is appropriate for the reasons set out herein; however, if relief is not provided as requested, we are seeking adjustment of the compliance date for the Rule to provide further time for relevant foreign issuers, sponsors and underwriters (collectively, **arrangers**) to adequately prepare for the application of the new requirements. In this regard, we note that many market participants outside of the U.S. became aware of the Rule only recently. European market participants have not been focused on the Rule to date as it was not expected that the U.S. authorities would (directly or indirectly) regulate matters related to deals lacking a clear U.S. connection. In general, it will be very difficult for such market participants to meet the scheduled compliance date.

We appreciate the opportunity to provide comments on the Rule and wish to thank the Commission in advance for its consideration of the matters referred to herein. We would be happy to discuss our comments with the Commission when convenient.

[1] A description of the association is provided in Annex I.

Exemption for non-U.S. offered transactions

As a starting point, we note that U.S. federal securities laws focus on the regulation of offerings to U.S. persons. This guiding principle of U.S. investor protection is reflected in the preamble to, and the findings set out at the start of, the Credit Rating Reform Act of 2006 and in the general mandate of the Commission itself. Consistent with this, it is clear that 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. Given this background, it is arguable that the application of the Rule to all credit ratings provided by an NRSRO or a registered affiliate – regardless of whether the relevant structured finance product transaction involves a U.S. investor connection (i.e. via a U.S. offering) – is inconsistent from a policy perspective with the wider U.S. legislative and regulatory framework.

We understand that the new requirements added to the Rule are intended to increase the number of credit ratings provided for a given structured finance product and, in particular, to promote the provision of credit ratings by NRSROs which are not hired by the arranger. In this regard, the requirements are informed by recent rating experience in the U.S. market, but do not necessarily take account of the experience in markets elsewhere. We respectfully submit that the non-U.S. experience and any corresponding regulatory "needs" are best assessed and addressed by local regulators rather than by the Commission. Moreover, while the Commission has undertaken an impact assessment in respect of the Rule based on inputs and assumptions relevant for U.S. established agencies and arrangers, it is not clear that those inputs and assumptions would apply equally in the case of agencies and arrangers established elsewhere. In general, the Rule may operate in a manner which is disruptive to local laws and markets.

In this regard, we note that the global application of the Rule gives rise to a number of potential issues and concerns. Below is a summary of certain key considerations.

- *Taking account of other (non-U.S.) regulatory regimes* – the application of the Rule in respect of a credit rating provided by an NRSRO and/or a registered affiliate, regardless of whether the relevant transaction involves a U.S. offering, does not take account of regulatory or other requirements which may already be in place in other (non-U.S.) jurisdictions with respect to credit rating agencies and/or the disclosure of information in respect of structured finance products. In this regard, we note that new requirements for credit rating agencies have recently been adopted in the European Union (**EU**) (via the EU Regulation on Credit Rating Agencies) and such requirements include conflict of interest provisions. Under the EU Regulation, new restrictions require credit ratings used in certain regulated activity contexts to be provided by a credit rating agency that is established in the EU and registered in accordance with the EU regulation, with provision for an adjusted endorsement regime for credit ratings provided by a (related) agency operating exclusively from a non-EU jurisdiction (provided that, amongst other things, such non-EU agency's local regulator has established a supervisory framework). The EU Regulation provides for the measures and requirements considered appropriate by the EU authorities for credit rating agencies established and registered in the EU. Significantly, we note that the Regulation does not purport to regulate credit rating agencies globally in all cases

without connection to the EU (we understand that this may have been considered by the EU authorities, but was ultimately rejected by such authorities in part due to jurisdiction overreaching concerns). It is arguable that linking the application of the Rule to whether or not there is a U.S. offering would be consistent with this approach, and with the U.S. investor protection mandate of the Commission in general.

- *Conflict with non-U.S. laws* – compliance with the disclosure requirements indirectly imposed on foreign arrangers via the Rule would give rise to certain non-U.S. legal considerations and possibly to certain legal conflicts. For example, it is not clear that compliance with the Rule by foreign issuers would not conflict in certain circumstances with bank secrecy and/or data protection laws in place in certain non-U.S. jurisdictions (e.g. in the EU). In this regard, we note that the EU Data Protection Directive restricts in general the transfer of personal data to a country outside the European Economic Area (**EEA**) unless certain onerous rules relating to the cross-border transfer of data are complied with. Further legal analysis would be required to determine whether the publication of asset-level information (such as that commonly provided to a hired NRSRO) via a website which could be accessed from a non-EEA country (as may occur in cases where a non-hired NRSRO does not have an establishment in the EEA) would be a relevant cross-border transfer of data under the Directive. Depending on the location of establishment of the relevant non-hired NRSROs, it may be necessary for such entities to comply with certain data handling procedures and/or to register with certain authorities. Moreover, strict bank secrecy regimes in place in certain jurisdictions (such as Germany and France) restrict the disclosure of personal data to third parties unless certain requirements are satisfied and further legal analysis would be required to determine the position with respect to disclosures to non-hired NRSROs. In general, it should not be assumed that compliance with the Rule would not conflict with local laws applicable to foreign arrangers with respect to information disclosure. Lastly, we note that certain deal information may be subject to contractual restrictions on disclosure which may extend to non-hired NRSROs (e.g. certain documentation in respect of the underlying assets, advisor comfort letters and opinions, etc.).

- *Heightened/significant impact for certain foreign market participants; potential implications for access to central bank liquidity operations* – the global application of the Rule may have a heightened impact for certain foreign market participants due to the potential intersection of the Rule with other requirements which may be relevant to such participants (and which are unlikely to be relevant to U.S. participants). In this regard, we note that the European Central Bank (**ECB**) has introduced changes to the rating requirements under its eligible collateral framework such that it will be necessary for second ratings to be sought in respect of a potentially large number of existing EU asset-based securities transactions in the coming months (prior to 1 March 2011). Given this background, application of the requirements contemplated by the Rule in respect of credit ratings provided for EU ABS transactions could have significant implications for EU arrangers and Eurosystem counterparties in general. As noted above, market participants based in the EU have not been focused on the Rule to date as there was an expectation that the U.S. authorities would not (directly or indirectly) regulate matters related to deals lacking a clear U.S. connection. To

the extent that such market participants are unable to comply with the new requirements in respect of ABS collateral (which will turn in part on the outcome of the legal analysis described above), this will impact on access to Eurosystem funding for relevant counterparties. Members believe that the number of transactions that could be affected by the Rule could be significant. We further note that there is some uncertainty as to how the Rule is intended to apply in the context of existing deals where an additional rating is sought, and this uncertainty may create awkward issues for EU market participants in particular due to the ECB requirements.

Based on the foregoing, we are seeking an exemption from the Rule for credit ratings provided in respect of transactions which do not involve an offering into the U.S. (e.g. for transactions done under Regulation S). While the new requirements contemplated by the Rule are framed as rating agency requirements, the provisions referring to websites with arranger-provided information clearly have significant consequences for issuers, sponsors and underwriters in respect of rated deals in general and such consequences are arguably less appropriate in the context of offshore deals where the only U.S. connection arises as a result of the agency itself registering its non-U.S. ratings entities under the NRSRO rules. We consider that setting the scope for application by reference to whether or not there is a U.S. offering of the relevant securities would satisfy the Commission's policy objectives, provide sufficient certainty for market participants and regulators in other jurisdictions and avoid certain unintended consequences which might otherwise arise in the context of rated deals involving foreign arrangers.

If the Commission declines to provide the requested exemption (notwithstanding the compelling reasons for doing so as set out herein), then we wish to request adjustment of the compliance date to provide further time for foreign arrangers to adequately prepare for the application of the new requirements. As noted above, many market participants outside of the U.S. became aware of the purported global application of the Rule only recently and such participants have expressed significant concerns that they will be unable to meet the current tight timeframe. A number of material disclosure-related regulatory initiatives have been proposed recently by various authorities (in Europe and elsewhere) and the cumulative impact of such initiatives on EU market participants' operational systems and resources should not be underestimated. In addition, as noted above, certain local laws may need to be considered in order for EU market participants to comply with the Rule.

In closing, we note that application of the Rule in respect of credit ratings provided on deals involving European arrangers will give rise to significant operational issues and will delay transactions in what is already a fragile market. In considering our request, we ask the Commission to please bear in mind the potential significant impact of the Rule on the European ABS market and, in turn, on the funding of real economy assets in Europe.

SIFMA Request

We understand that the Securities Industry and Financial Markets Association (**SIFMA**) has contacted the Commission to confirm the agreement of Commission staff with certain views on issues under the text of the Rule and certain corresponding release materials. We concur with SIFMA and join in its request.

Thank you once again for the opportunity to comment on the Rule. Should you have any questions or desire additional information regarding any of the comments set out above, please do not hesitate to get in touch with the undersigned (Tel. +44 (0)20 7743 9333) or Marco Angheben (Tel. +44 (0)20 7743 9335).

Association for Financial Markets in Europe / European Securitisation Forum
Rick Watson, Managing Director and Chief Operating Officer

cc. Mr. Robert W. Cook
Mr. Michael A. Macchiaroli

Annex I

The AFME / European Securitisation Forum (AFME / ESF) is a part of the Association for Financial Markets in Europe (AFME). AFME was formed on November 1st 2009 following the merger of LIBA (the London Investment Banking Association) and the European operation of SIFMA (the Securities Industry and Financial Markets Association) and incorporates a number of former affiliate organisations, including the ESF. AFME represents a broad array of European and global participants in the wholesale financial markets and its membership comprises pan-EU and global banks, as well as key regional banks, brokers, law firms, investors, issuers, accounting firms, credit rating agencies, service providers and other financial market participants. AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA) and is an affiliate of the US Securities Industry and Financial Markets Association (SIFMA) and the Asian Securities Industry and Financial Markets Association (ASIFMA). For more information, visit the AFME website, www.AFME.eu.