Please note that the comments expressed herein are solely my personal views

Securities and Exchange Commission
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6 June 2011

- 17 CFR Parts 240, 242 and 249
- File No. S7-15-11
- Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934

Dear Sir.

Thank you for giving us the opportunity to comment on your proposed rule: Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934.

Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) requires the Securities and Exchange Commission (SEC) to remove any references to credit ratings from its regulations and to substitute such standard of creditworthiness as the SEC determines to be appropriate. In this release, the SEC is proposing to amend certain rules and one form under the Securities Exchange Act of 1934 (Exchange Act) applicable to broker-dealer financial responsibility, distributions of securities, and confirmations of transactions. The SEC also is requesting comment on potential standards of creditworthiness for purposes of Exchange Act Sections 3(a)(41) and 3(a)(53), which define the terms "mortgage related security" and "small business related security", respectively, as the SEC considers how to implement Section 939(e) of Dodd-Frank.

Reducing the reliance on credit rating references

This is one of several proposed rules that the SEC will be considering in order to reduce reliance on credit rating references in SEC rules and forms. I strongly support this, in that financial actors should not blindly rely on credit ratings from NRSROs when evaluating securities, but should take more responsibility in this arena in line with their (fiduciary)

responsibilities.[1] For example, in proposing amendments to Rule 15c3-1 you have proposed the following factors as proxies for assessing credit risk:

- credit spreads
- securities-related research
- internal or external credit risk assessments
- default statistics
- inclusion on an index
- priorities and enhancements
- price, yield and/or volume
- asset class-specific factors

This list is fairly complete and provides a sufficient basis for assessing credit risk. It would be preferable for broker-dealers to rely more on the hard factors, such as credit spreads, internal credit risk assessments, default statistics, priorities and enhancements, price, yield and/or volume, and asset class-specific factors as inputs to their creditworthiness assessments, compared with the softer factors, such as securities-related research, external credit risk assessments and even inclusion on an index, which tend to have a layer of external subjectivity and arbitrariness around them. Broker-dealers should be able to provide a robust and auditable level of assessment on this basis. Additionally, in order to establish a basis for a haircut of less than 15%, a broker-dealer would have to establish, maintain and enforce written policies and procedures for determining the creditworthiness of a security acquired by the firm, and preserve records thereon for three years. I would recommend that such records should be updated on any significant change in the (written) policies and procedures for determining creditworthiness. I would also recommend that broker-dealers should be required to maintain such records, including creditworthiness determinations, indefinitely. Original documents should be scanned. There is no technological or practical reason for limiting the retention period here, and it would be useful to keep this information for future analytical purposes.

I would suggest that the above list of factors, or similar, would also provide a suitable basis for "creditworthiness" assessments under Exchange Act Rule 15c3-3 and Rules 101 and 102 of regulation M.[2] This approach could also be adopted for creditworthiness standards under Exchange Act Sections 3(a)41 and 3(a)53. The application of such a uniform "principles-based" approach would improve regulatory consistency, flexibility and adaptability.

Yours faithfully

Chris Barnard

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[1] The SEC proposed in 2009 "to address the risk that the reference to and use of NRSRO ratings in Commission rules could be interpreted by investors as an endorsement of the quality of the credit ratings issued by NRSROs, and may encourage investors to place undue reliance on NRSRO ratings". See file nos. S7-17-08, S7-18-08, S7-19-08, SEC re-opening of 2008 comment period, October 2009.
[2] I support the proposed list of factors here, which relate to trading characteristics: e.g. liquidity, trading and fungibility.