



September 8, 2008

U. S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Attention: Secretary

File No.: S7-18-08

**Re: Realpoint LLC (“Realpoint”) Comments to Release No. 34-58071 Security Ratings
By Nationally Recognized Statistical Rating Organizations (“NRSROs”)**

The Commission may accomplish its stated goals¹ without also eliminating the benefits that independent NRSRO credit ratings may provide to investors and the public interest. The Commission’s reaction to the “recent turmoil in the credit markets”² should not be to eliminate the systems of checks-and-balances provided by existing references to NRSROs.

The Commission is reducing the desirability of Form S-3 registrations by proposing: (i) that offerings of securities registered on Form S-3 or issued under Rule 415 may only be sold in minimum denominations of \$250,000; (ii) that initial sales thereof may only be made to qualified institutional buyers;³ and (iii) “to eliminate the exclusion [under Rule 3a-7] for structured financings offered to the general public.”⁴ The Commission’s proposals, if adopted, will reduce the number of investors eligible to purchase asset-backed securities and reduce demand for public offerings of asset-backed securities. Unregistered securities are generally less liquid than registered securities. The Commission’s proposals will therefore reduce the market for, and impair the liquidity and marketability of, asset-backed securities.⁵

¹ “[T]he Commission is considering whether the inclusion of requirements related to security ratings in its rules and forms has, in effect, placed an ‘official seal of approval’ on ratings that could adversely affect the quality of due diligence and investment analysis. The Commission believes that today’s proposals could reduce undue reliance on credit ratings and result in improvements in the analysis that underlies investment decisions.” Security Ratings, Release 34-58071, SEC File Number S7-18-08, 73 Fed. Reg. 40106 (July 11, 2008) [hereinafter, “SEC File Number S7-18-08”] at page 40107.

² *Id.*

³ *Id.* at 40109-40110.

⁴ References to Ratings of Nationally Recognized Statistical Rating Organizations, Release IC-28327, SEC File Number S7-19-08, 73 Fed. Reg. 40124 (July 11, 2008) at page 40128.

⁵ On SEC File Number S7-18-08 Page 40110, the first and fifth questions posed are as follows: “Is the proposed amendment to the Form S-3 eligibility requirement for asset-backed securities appropriate? Is there a better alternative to the investment grade ratings component? If so, what is that alternative and why is it better? Should Form S-3 limit initial sales of eligible asset-backed securities to qualified institutional buyers? Should the requirement include sales to an additional group of investors (e.g., institutional accredited investors)? If so, why? Should subsequent sales be limited as well? Would it be appropriate to eliminate the minimum denomination requirements after some period of time, such as after six months or one year from the date of issuance? Are there particular kinds of ABS offerings that are sold to investors other than qualified institutional buyers?”

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The Commission's approach may indirectly reduce yields of asset-backed securities because investors, broker-dealers and other market participants will need to incur additional staffing, data and other costs for review, analysis and surveillance thereof.

Realpoint and others who filed comments to SEC File No. S7-13-08⁶ opined that separate rating symbols should not be implemented to differentiate structured finance products from corporate debt securities. The Commission's proposals to limit the potential investor base for asset-backed securities is a more subtle, but equally damaging, means to implement this differentiation. This differentiation will create confusion within the financial markets with respect to, and impair the value of, structured finance products.

To promote capital formation and liquidity, the Commission should permit accredited investors to purchase asset-backed securities. The Commission should also consider reducing the minimum denominations to \$100,000.

The Commission should not remove investment-grade asset-backed securities offerings from the Form S-3 eligibility provisions;⁷ however, in retaining the existing exception for investment-grade asset-backed securities, the Commission should further provide that such determination, of investment-grade status, be made by Requisite NRSROs.⁸ The Commission should also consider amending the definition of "Requisite NRSROs" to include therein at least one unsolicited NRSRO credit rating⁹ (when such a rating is available). Under current practices, two NRSROs rate each issuance of asset-backed securities. Ratings from unsolicited NRSROs are expected to be available following implementation of the Commission's proposal, in SEC File No. S7-13-08, for new Rule 17g-5(a)(3), to require arrangers to disclose to unsolicited credit rating agencies all information that they provide to their solicited NRSROs to develop credit ratings,¹⁰ provided that such disclosures to unsolicited credit rating agencies are made simultaneously with the disclosures to the solicited NRSROs.

With respect to issuances of commercial mortgage-backed securities ("CMBS"), if NRSRO credit ratings do not provide a regulatory benefit to issuers, then issuers will seek to forego obtaining independent credit ratings. A typical CMBS issuance incurs a cost of approximately 14± basis points to obtain two NRSRO credit ratings. For a typical CMBS issuance, approximately 86%± thereof is rated investment grade. The remainder is rated below investment grade and typically is purchased by a limited number of B-piece buyers. The B-piece buyers perform their own due diligence and analysis and negotiate directly with the issuer. Thus, if issuers are able to market the investment grade tranches without being required to obtain NRSRO credit ratings for regulatory purposes, then issuers will be in a

⁶ Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-57967, SEC File No. S7-13-08, 73 Fed. Reg. 36212 (June 25, 2008).

⁷ SEC File Number S7-18-08 at pages 40109-40110.

⁸ Under existing Rule 2a-7, "Requisite NRSROs" means: (i) [a]ny two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or (ii) [i]f only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund acquires the security, that NRSRO. 17 CFR § 270.2a-7(a)(21). This response includes a recommendation that the Commission amend its definition of "Requisite NRSROs" to include at least one unsolicited NRSRO credit rating.

⁹ "[A]n "unsolicited rating" is one that is determined without the consent and/or payment of the obligor being rated or issuer, underwriter, or [other] arranger of the securities being rated." Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-57967 73 FR 36212 (June 25, 2008) at page 36219, n.65. "Arrangers earn fees from originating, structuring, and underwriting." *Id.* at page 36216.

¹⁰ SEC File Number S7-18-08 at page 40115, n.118.

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position to establish the tranches, or subordination levels, for the investment-grade and non-investment grade tranches of the offering without reference to NRSRO credit ratings.

The Commission's proposals (published July 11, 2007), if adopted, may therefore trigger a decrease in the number, and frequency of surveillance updates, of credit ratings. The Commission's approach is not consistent with "[t]he purposes of the Credit Rating Agency Reform Act of 2006," which "are to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry."¹¹

These suggested revisions to the Commission's proposals are consistent with the Commission's Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-57967 73 FR 36212 (June 25, 2008), wherein the Commission seeks to promote disclosure of information to all NRSROs rather than just the arranger-paid NRSROs and wherein the Commission raised its concern with "whether it[s] proposal] results in a significant reduction in the information provided to NRSROs."¹² Without these suggested revisions, the Commission will have inadvertently supported a reduction in the flow of information to NRSROs.

Thank you for the opportunity to comment on the above-referenced proposed amendments. Please do not hesitate to contact us if you have any questions.

Very truly yours,



Robert Dobilas
CEO and President
Realpoint LLC

¹¹ Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations; Proposed Rule, Release 34-55231, SEC File Number S7-04-07, 72 Fed. Reg.6378 (February 9, 2007) at page 6409. "Increased confidence in integrity of NRSROs and the credit ratings they issue could promote participation in the securities markets. Better quality ratings could also reduce the likelihood of an unexpected collapse of a rated issuer or obligor, reducing risks to individual investors and to the financial markets." *Id.* at page 6410.

¹² *Id.* at page 36220.