



December 14, 2009

Elizabeth M. Murphy  
Secretary  
Securities & Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: Credit Rating Agency Disclosure (RIN 3235-AK41); File Number S7-24-09**

The Mortgage Bankers Association (MBA)<sup>[1]</sup> appreciates the opportunity to comment on the above referenced proposed rule (Proposal) issued for comment by the Securities and Exchange Commission (SEC) that would require registrants to disclose the preliminary rating of securities. The Proposal would amend registration statements filed under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940, and Forms 8-K and 20-F.

## **Background**

The required disclosure of initial ratings is intended to mitigate a practice described as “ratings shopping”. Ratings shopping involves soliciting multiple rating agencies for a preliminary rating and then selecting the rating agency(ies) for the rating assignment based upon the most favorable preliminary ratings. In the Proposal, the SEC indicates, “We believe investors should be made aware of when a registrant (or a person acting on a registrant’s behalf) may be engaged in ratings shopping”.

## **Challenges with Disclosing Preliminary Ratings**

In the case of commercial mortgage-backed securities (CMBS), the pool of properties comprising the securitization can change significantly from the initial pool that received the preliminary rating and the final pool that is subject to the complete rating process. The CMBS model contains a first loss component that specialized investors purchase

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<sup>[1]</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

(B-piece investors). Because these investors are in a first loss position, they perform loan level due diligence on that loan pool that comprises each CMBS transaction. This process typically occurs after the preliminary rating is issued. Through this due diligence process, B-piece buyers can require loans that do not meet their acceptance criteria to be removed from the loan pool. Consequently, the composition of the loan pool is likely to change materially after the preliminary rating. In addition, the full ratings process is far more rigorous than preliminary ratings process. This creates several challenges for disclosing preliminary ratings that include:

- Disclosure of the preliminary rating information for a loan pool is unlikely to accurately reflect the final pool of loans that were securitized. Consequently, the utilization of the preliminary ratings as part of the evaluation process for a loan pool that has been materially modified from its original composition will lead to analytical errors.
- Preliminary ratings can vary from a cursory analysis to a more detailed analysis of a mortgage pool. In either case, the rating agency(cies) that is selected to perform the final ratings will incorporate a far more complex analysis than was performed in the preliminary rating. This can result in significantly different ratings for the same pool of loans. Consequently, preliminary and final ratings should not be compared because they can potentially change significantly even if the loan pool is not modified.

For these reasons, we fear that the mechanistic disclosure of preliminary ratings could be affirmatively misleading to investors.

### **Ratings Transparency**

Instead of requiring the disclosure of preliminary ratings, MBA supports SEC efforts to increase transparency and reliability in credit ratings of securities backed by real estate. MBA is mindful that the financial services system has witnessed a tremendous increase in the level of complexity and sophistication in financing options, investment products and liquidity channels. Consequently, MBA has strongly supported the SEC efforts to increase the transparency of the ratings process and ratings data. Moreover, the industry is already self-correcting. The emergence of rating agencies that specialize in unsolicited ratings serves as a new and important safeguard.

### **Unique Identifier for Structured Securities**

As detailed in the July 25, 2008 letter to the SEC, MBA strongly believe the unique identifier for structured securities would serve as a disincentive to purchase all categories of structured securities. As previously indicated, MBA continues to support measures that would increase transparency in structured transactions in lieu of a subscript as a method to help return confidence to the capital markets.

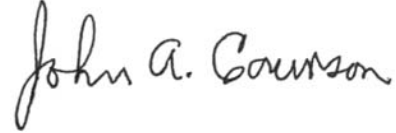
MBA SEC Rating Agency Letter

December 14, 2009

Page 3

We appreciate your consideration and stand ready to work with you on this issue. If you have any questions regarding MBA's comments, please contact George Green, Associate Vice President, at (202) 557-2840 or [ggreen@mortgagebankers.org](mailto:ggreen@mortgagebankers.org).

Sincerely,

A handwritten signature in black ink that reads "John A. Courson". The signature is written in a cursive style with a large initial "J".

John A. Courson  
President and Chief Executive Officer  
Mortgage Bankers Association