December 14, 2009

By Electronic Mail (rule-comments@sec.gov)

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Credit Ratings Disclosure: Release Nos. 33-9070, 34-60797, IC-28942; File No. S7-24-09 (Oct. 7, 2009)

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("SIFMA")[1] Credit Rating Agency Task Force (the "Task Force")[2] is pleased to have the opportunity to comment, on behalf of SIFMA, on the proposed credit rating disclosure amendments by the Securities and Exchange Commission ("SEC" or "the Commission") that would apply to registration statements filed under the Securities Act of 1933 (the "Securities Act"), the Securities Exchange Act of 1934 (the "Exchange Act"), the Investment Company Act of 1940 (the "Investment Company Act"), and Forms 8-K and 20-F.

The Task Force fully supports the Commission's proposal to require more fulsome disclosure relating to credit ratings issued by credit rating agencies including Nationally Recognized Statistical Ratings Organizations ("NRSROs"). Investors use credit ratings to

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1 SIFMA brings together the shared interests of more than 650 securities firms, banks, and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while reserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington, DC, and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. More information about SIFMA is available on its website at www.sifma.org.

2 The Task Force is a global, investor-led industry member task force formed to examine key issues related to credit ratings and the credit rating agencies. It is comprised of 37 individuals from the US, Europe, and Asia and includes asset managers, underwriters, and issuers. The Task Force members include experts on structured finance, corporate debt, municipal debt, and risk. It has been noted by the President's Working Group on Financial Markets (the "PWG") as the private-sector group to provide the PWG with industry recommendations on credit rating matters. More information on the Task Force, including a roster of Task Force members, can be found at *www.sifma.org/capital_markets/cra-taskforce.shtml*.

analyze the credit risks associated with fixed income securities and credit ratings have thus become a crucial tool for investors to make informed investment decisions. As a result, the Task Force believes that investors should have access to material information as to the scope and any limitations to a credit rating as well as any material conflicts of interest that may affect a rating. This will allow investors to determine whether a rating is credible and independent, which is, of course, a fundamental goal of the federal securities laws. Increased transparency of the credit rating process also will support the role of the United States as a global leader of the financial markets because investors from around the world will have confidence in our capital raising processes.

While the Task Force agrees with the Commission that more disclosure on credit ratings issued is needed, we also think that certain terms discussed in the Release should be clarified and, perhaps most important, that the responsibility for providing certain disclosures should rest with the rating agency, rather than the registrant. In particular, while registrants can, for example, disclose information such as the credit rating agencies that provided the ratings, the date that ratings were assigned, the party who is compensating the agency for the rating, and the relative rank of the credit rating within the credit rating agency's classification system, other information -- such as whether any material scope limitations and any contingencies related to the securities are or are not reflected in the rating -- are within the control of the credit rating agency and therefore disclosure of such information should be the responsibility of the agency. We will discuss these and other points below.

We note Congress is considering, in at least two bills, a number of issues that would directly affect credit rating agencies, including their potential litigation exposure.[3] Similarly, if the Commission's *Concept Release on Possible Rescission of Rule 436(g) Under the Securities Act of 1933*, Releases 33-9071, 34-60798, IC-28943; File No. S7-21-09 (Oct. 7, 2009), is adopted, NRSROs would potentially face more litigation risk.[4] The great unknown in responding to this Release as well as the Concept Release is how credit rating agencies, especially NRSROs, will react to the possibility that they could be subject to increased civil litigation in connection with their ratings. The Task Force is concerned that rescission of Rule 436(g) -- which currently excludes NRSROs from liability under Section 11 of the Securities Act -- could result in fundamental changes to the way the bond market currently works. In particular, we are concerned that NRSROs may decide not to provide consent to the use of their ratings in registration statements or may even decide to withdraw from the ratings business. If NRSROs do not provide consent, then much of the disclosure discussed in the Credit Ratings Disclosure Release and herein may be moot. As a result, and as will be discussed in more detail in the Task

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[3] See *The Accountability and Transparency in Rating Agencies Act*, H.R. 3890, and *Restoring American Financial Stability Act of 2009*, Senate Committee on Banking, Housing, and Urban Affairs (Nov. 19, 2009).

[4] The Task Force is providing its comments to the Concept Release separately. *See* Letter of Sean C. Davy of SIFMA to Elizabeth M. Murphy, Secretary, SEC, regarding *Concept Release on Possible Rescission of Rule 436(g) Under the Securities Act of 1933*, dated December 14, 2009.

Force's response to the Concept Release, we encourage the Commission to consider the potential unintended consequences of rescinding Rule 436(g). We, of course, urge the Commission to take any actions that will best protect investors while maintaining the efficacy of the securities markets.[5]

Trigger for Required Disclosure

Pursuant to the Release, if the proposed rules were adopted, a registrant would have to "provide detailed disclosure regarding credit ratings if the registrant, any selling security holder, any underwriter, or any member of a selling group uses a credit rating from a credit rating agency with respect to the registrant or a class of securities issued by the registrant, in connection with a registered offering."[6] The term "uses" is broadly defined to include, among other things, any oral or written selling efforts. Given the breadth of the definition, some members of the Task Force are concerned that there will not be a uniform trigger for disclosure and therefore urge the Commission to refine the definition of "use". The Task Force believes that any selling security holder, any underwriter, and any members of a selling group could comply with a more refined "use" trigger by establishing policies and procedures on what constitutes "use" as well as providing training to individuals involved in marketing efforts. The Task Force does not believe the use of a credit rating by any other entity should require the registrant to disclose information on its ratings because the registrant must have a method of overseeing the selling efforts (*e.g.,* through a master underwriter agreement) and it would be impossible for the registrant to police all uses of credit ratings of its securities. The disclosure requirements should not apply if a rating is not "used" because that would not further the public policy issues underlying the Release.

The Task Force agrees with the Commission that a registrant should *not* have to provide disclosure when it has not sought or otherwise solicited a credit rating unless it is used in connection with a registered offering of its securities. As noted by the Commission, other SEC proposals and rules might possibly encourage unsolicited ratings and it would be unduly burdensome for a registrant to have to monitor for unsolicited ratings as well as any changes or withdrawals of a rating.

The Task Force further supports the Commission's views that disclosure should not be triggered when registrants discuss their credit ratings in other contexts in periodic reports or Securities Act registration statements. It would be unworkable for disclosure to be required each and every time a credit rating is referenced or discussed by a registrant; instead, disclosure should only be required in ways that will inform investors making investment decisions.

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5 The Task Force supports increased competition in the credit rating agency business and thus encourages the Commission to consider the comments provided by credit rating agencies and registrants as to whether any of the Commission's proposals will discourage competition or registration with the Commission of NRSROs.

6 Release at 16. "Credit rating" and "credit rating agency" are defined in Sections 3(a)(60) and (61) of the Exchange Act.

Required Disclosure

The Task Force generally agrees with the Commission on the types of information that should be disclosed but, as previously noted, thinks that credit rating agencies should be responsible for disclosing information that is under their control. For instance, the registrant can disclose the following: (i) the rating; (ii) the credit rating agency that provided the rating; (iii) the date the rating was assigned; (iv) the relative rank of the credit rating within the credit rating agency's classification system; (v) a credit rating agency's definition or description of the category in which the credit rating agency rated the class of securities; and (vi) a statement informing investors that a credit rating is not a recommendation to buy, sell, or hold securities; that it may be subject to revision or withdrawal at any time by the assigning credit rating agency; that each credit rating is applicable only to the specific class of securities to which it applies; and that investors should perform their own evaluation as to whether an investment in the security is appropriate.

The registrant should not, however, be responsible for disclosing the following:

- All material scope limitations of the credit rating;
- How any contingencies related to the securities are or are not reflected in the credit rating;
- Any published designation reflecting the results of any other evaluation done by the credit rating agency in connection with the rating, along with an explanation of the designation's meaning and the relative rank of the designation; and
- Any material differences between the terms of the securities as assumed or considered by the credit rating agency in rating the securities and (i) the minimum obligations of the security as specified in the governing instruments of the security; and (ii) the terms of the securities as used in any marketing or selling efforts.

These topics are within the control and knowledge of the credit rating agencies -- not registrants -- and thus rating agencies should be responsible for disclosure of these matters.

Potential Conflicts of Interest

The Task Force fully supports disclosure of potential conflicts of interest that could affect a credit rating. Investors should have access to sufficient information to determine whether any perceived conflict could impact a rating and the extent of any such impact. Therefore, we believe that a registrant should disclose who is compensating the credit rating agency for a rating. We agree that the amount of remuneration should not be disclosed if the rating agency does not provide any "non-rating services" to a registrant and its affiliates because the amount paid would not, in and of itself, assist an investor in assessing potential conflicts.

The Task Force also agrees investors have a right to know whether a registrant is receiving, and paying for, other services from a credit rating agency. We, however, urge the Commission to clarify its proposals as they relate to "non-rating services". The term "non-ratings services" is broad and ambiguous and requiring disclosure of such services to affiliates of registrants may be unworkable, especially if the registrant is part of a large corporate family such as a global company with affiliates acting in multiple countries. The Task Force suggests defining "non-ratings services" to exclude, for example, subscriptions to research and licensing of indices. The term should instead include consulting or advisory work of a substantial magnitude that is provided to the registrant or to its direct parent and any direct subsidiaries (not subsidiaries of subsidiaries).

Moreover, given that the goal is to make investors aware that a credit rating agency may have an incentive to provide a higher rating because the credit rating agency is being compensated for other services, the Task Force does not believe that the actual amount of compensation should be material. In other words, a registrant should be required to disclose if it, its direct parent, or any direct subsidiary obtained "non-ratings services" but a registrant should not be required to disclose the amount of compensation paid to the rating agency. Indeed, providing the amount of compensation may be confusing to investors if they do not look at the context of the amount of compensation by comparing, for example, a registrant that pays $1 million for non-ratings services but has assets of $1 billion to a company that pays the same amount but has assets of $20 million.

The Commission further requests comment on whether it should require additional context on credit rating agency compensation such as the percentage of revenue that an NRSRO or other credit rating agency earns from a registrant so that investors would be aware of when a registrant accounts for a significant percentage of the rating agency's revenue. The Task Force supports disclosure of information that may be material to investors but thinks that credit rating agencies and investors may be in a better position to comment upon this issue.[7]

With regard to underwriters and non-ratings services, and as recognized by the Commission in the Release, underwriters do, at times, pay credit rating agencies for credit ratings. Underwriters usually are, however, acting upon behalf of the registrant and the cost of the rating typically is passed on to the registrant. Some members of the Task Force thus believe that requiring an underwriter to disclose that it or its affiliates receive non-ratings services from a credit rating agency would cause confusion and would not further the goal of the Commission to require disclosure of potential conflicts of interest. These Task Force members believe that investors would be better served if registrants -- not underwriters -- disclose receipt of non-ratings services when underwriters pay credit rating agencies for ratings of registrants because it

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[7] The Task Force notes that new rules and regulations relating to credit rating agencies may change the balance between registrant-paid ratings and investor-paid ratings and we therefore suggest that the Commission consider requiring NRSROs to provide information that will assist the Commission in tracking whether investor-paid ratings become more prevalent. Such information may be useful in ensuring that the general public has sufficient access to material information with regard to credit ratings.

should be assumed that the underwriter is acting on the registrant's behalf. Other Task Force members think that underwriters may, in certain circumstances, be subject to conflicts of interest and that, if they pay for credit ratings, those underwriters should disclose whether they or their affiliates received non-ratings services. These Task Force members suggest that disclosure only be required if certain triggers are met.

Ratings Shopping

As discussed throughout this letter, the Task Force generally supports the Commission's efforts to enhance credit rating disclosure so that investors will better understand credit ratings and their limitations. To place credit ratings in an appropriate context, investors should have access to information that might indicate when a registrant engaged in ratings shopping. Inflated ratings that are the result of ratings shopping could harm investors and such harm would undermine the integrity of our markets. Thus, inflated ratings should be revealed through appropriate disclosures. Accordingly, the Task Force agrees with the Commission that, "if a registrant has obtained a credit rating and is required to disclose that rating, then all preliminary ratings of the same class of securities as the final rating that are obtained by credit rating agencies other than the credit rating agency providing the final rating must be disclosed."[8] We further agree that if a rating is required to be disclosed, then any rating obtained by a registrant but not used also must be disclosed.

Registrants must, however, be able to engage in open communications with rating agencies so that rating agencies have access to all information necessary to determine an appropriate rating. Such open communications may be curtailed if "preliminary rating" is defined too broadly and too early in the process. There also needs to be a clear line between general communications and a preliminary rating or this could result in subjective -- as opposed to uniform -- determinations as to what constitutes a preliminary rating. Accordingly, the Task Force encourages the Commission to adopt a bright line test as to the definition of "preliminary rating". The Task Force believes that the bright line exists when a credit rating agency's ratings committee approves a rating. Any discussions before approval by a rating agency's rating committee is too subjective because neither rating agencies nor registrants will know where to draw the line.

A clear delineation of what constitutes a preliminary rating also will help allay investor confusion as to the difference between final and preliminary ratings. As registrants develop and structure securities, it would not be unusual for an initial rating to evolve based upon changes to the security. If the communications between the registrant and the rating agency result in a "preliminary rating" too early in the process, it is likely that there could be a wide gap between the preliminary and final ratings -- and investors might not understand the reasons for this gap. The Task Force believes that the gap would be narrowed, and investors would be better positioned to understand ratings, if a rating becomes a "preliminary rating" at a specific point in

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[8] Release at 48.

the chain of security creation. We believe the most relevant point in time is when a rating agency's rating committee approves a rating.

While we support disclosure of preliminary ratings, we urge the Commission to study how this will affect new or smaller issuers that do not have performance histories that credit rating agencies can use in determining creditworthiness. It is likely that new or small registrants will need to consult with a variety of credit rating agencies and preliminary discussions should not automatically be equated with preliminary ratings or such registrants may be discouraged from capital raising efforts.

Disclosure in Exchange Act Reports

The Task Force supports the Commission's proposed new item requirement to Form 8-K, which would require a registrant to disclose within four days of notice that a credit rating has been changed, withdrawn, or is no longer being updated. Registrants should only be required to report such matters upon actual knowledge or written notice from the relevant credit rating agency and should only apply to ratings used in marketing efforts -- this requirement should not apply to unsolicited ratings or to ratings received but not used. We note that registrants may not know when a rating is no longer being updated and thus submit that the Commission should require rating agencies to provide written notification if this is the case so that registrants may comply with their reporting obligations.

Conclusion

The Task Force appreciates the opportunity to comment on the Commission's proposed amendments. We support the efforts by the SEC to require disclosure that will allow investor to better understand credit ratings, their limitations, and potential conflicts of interest. Such disclosures should increase investors' confidence in the credit rating process and in the integrity of the financial markets.

Very truly yours,

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