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December 14, 2009

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

Re: *Credit Ratings Disclosure*, Securities Act of 1933 Rel. No. 9070; Securities Exchange Act of 1934 Rel. No. 60797; Investment Company Act of 1940 Rel. No. 28942 (October 7, 2009)
File No. S7-24-09

Dear Ms. Murphy:

Standard & Poor's Ratings Services ("Ratings Services"), a nationally recognized statistical rating organization ("NRSRO") registered under Section 15E of the Securities Exchange Act of 1934 (as amended, the "Exchange Act"), welcomes the opportunity to comment on the proposed rule and form amendments contained in the release referenced above.

The Commission has proposed amendments to its rules and forms under the Securities Act of 1933 (as amended, the "Securities Act"), the Exchange Act and the Investment Company Act of 1940 to require disclosure of information regarding each credit rating used in connection with a registered offering of securities, so that investors will better understand the credit rating, its limitations and potential conflicts of interest that could affect it. In addition, the Commission has proposed to require disclosure of certain preliminary credit ratings so that investors have a clearer picture of the process an issuer followed to obtain a rating.

Ratings Services supports the Commission's goal to enhance investor understanding about credit ratings and the rating process and we believe that many of the proposed disclosure items have the potential to accomplish this. However, as addressed more fully in our comment letter responding to the Commission's *Concept Release on Possible Rescission of Rule 436(g) Under the Securities Act of 1933*, Securities Act Rel. No. 9071 (October 7, 2009), many of these benefits would be lost if rule 436(g) under the Securities Act were no longer in effect. Indeed, without rule 436(g), the proposed rules could lead to less information for investors rather than more as issuers would have a strong impetus to avoid the Securities Act registration process – and accordingly, the enhanced disclosure requirements – entirely.

Assuming, however, the benefits of these new rules are not undercut by a rescission of rule 436(g), we believe investors and the market as a whole will benefit from more robust disclosure about:

- The relative rank of the credit rating within the credit rating agency's classification system;

- The credit rating agency's description of the category in which the class of securities is rated;

- The identity of the party compensating the credit rating agency;

- Any material scope limitations of the credit rating, and any material differences between the securities as considered by the credit rating agency and as marketed to investors; and

- Information with respect to final ratings that are not used, and preliminary ratings from credit rating agencies that do not provide the final rating used to market the securities.

These disclosure items, as a group, will give investors information that is directly applicable to understanding what a credit rating means (and just as importantly, what it does not mean), how relevant the credit rating is to the security being marketed, and whether another credit rating agency may hold a fundamentally different perspective on the riskiness of the security. This information should help discourage undue reliance on credit ratings, and help underline the principle that a credit rating is one factor among many that an investor should consider in making an informed investment decision. Although we understand that some issuers may have questions about particular aspects of the proposed disclosure requirements, we believe that the overall thrust of the Commission's proposals is firmly in the best interests of investors and the markets, and we trust that the Commission will give careful consideration to any practical concerns raised by issuers and their representatives.

We have one observation regarding the proposal to require disclosure of the identity of the party who is compensating the credit rating agency. See proposed Item 202(g)(6) of Regulation S-K (and corresponding proposed amendments to Forms 20-F and N-2). We believe that the purpose behind this proposal – to alert investors to potential conflicts of interest – would be furthered by adding a requirement that the issuer also disclose, if known to the issuer, the identity of any party or parties reimbursing the payor, in whole or in part, for the rating agency fees. For example, in some structured finance transactions, while the issuer may be the direct payor, the issuer may be reimbursed by certain investors for all or a portion of these fees. In such a case, disclosure of the identity of the ultimate payor, or in the alternative disclosure of the fact that the issuer is being reimbursed by investors or other third parties for such expenses, would give investors a more complete understanding of the economic arrangements involved.

We have two principal concerns with the amendments as proposed, which we discuss below.

1. *The benefits of enhanced disclosure will be lost if issuers are motivated to bypass the Securities Act registration process.*

As we discuss more fully in our rule 436(g) concept release comment letter, much of the benefit of these enhanced disclosure requirements will be lost if issuers bypass the Securities Act registration process in order to avoid the increased costs and potential for delay that will result if issuers are required to obtain and file the consent of the credit rating agency when a credit rating is used in connection with a registered offering, or if issuers bypass the registration process in order to proceed when a credit rating agency is unwilling to provide its consent. Indeed, the offerings where this enhanced disclosure would be of the most benefit are likely to be the same in which the need to obtain and file a consent poses the highest hurdles in terms of increased expense, potential delay and reluctance on the part of the credit rating agency. We believe that rescinding rule 436(g) would be counterproductive to the Commission's goal of increasing the level of useful disclosure about credit ratings during the offering process. Accordingly, if rule 436(g) were no longer in effect, we believe the Commission would need to reconsider whether the proposed amendments could still accomplish the Commission's goal of enhanced disclosure.

Proposed Instruction 3 to Item 202(g) of Regulation S-K (and corresponding proposed amendments to Forms 20-F and N-2) addresses the private offering concern in part, by providing that a credit rating is considered "used' in a registered offering when it is used in an unregistered offering "and the securities offered privately are subsequently exchanged for substantially similar registered securities." Although it is not clear whether the Commission is creating a disclosure requirement that applies in the context of the private offering itself, we doubt that the proposed instruction will have much impact if an issuer is motivated to avoid a requirement to obtain the credit rating agency's consent. With the 2007 amendments to rule 144 under the Securities Act that shortened the holding period for restricted securities to six months, we believe that these issuers will find it relatively easy to market private offerings without providing investors with "Exxon Capital" exchange rights.

2. *The new requirements should not trigger the disclosure of irrelevant information.*

We believe that the Commission's goals are more likely to be achieved if the new disclosure requirements avoid triggering the disclosure of information that would have little or no value to investors. While much of the information required by proposed Item 202(g) is relevant to a properly informed investment decision, in the instances discussed below we believe the new disclosure requirements are overbroad and should be reconsidered.

Proposed Item 202(g)(7) of Regulation S-K

A requirement to disclose all fees paid by a registrant and its affiliates to the credit rating agency and its affiliates for non-ratings services, without any materiality threshold,

would be unduly burdensome for issuers and yield little in the way of substantive information for investors. Proposed Item 202(g)(7) of Regulation S-K (and corresponding proposed amendments to Forms 20-F and N-2) would require disclosure of "the fee paid for the credit rating . . . and the aggregate fees paid for any other non-rating services provided during the registrant's last completed fiscal year and any subsequent interim period up to the date of the filing." This disclosure obligation would require issuers and their affiliates to have systems in place to track payments for such things as magazine subscriptions – literally on a daily basis – even though they have nothing to do with credit ratings, financial transactions or material operational activities.

While we agree that an investor may want to know if a credit rating agency is potentially influenced by the revenue stream that it and its affiliates receive from an issuer and its affiliates, if the revenue stream is relatively insignificant to the credit rating agency and its affiliates then it is very difficult to understand why an investor would need (or want) to know the actual dollar amounts involved. At the same time, if an issuer and its affiliates are responsible for a significant portion of a credit rating agency's revenue stream, we believe that this fact would be significant to the investor even if the credit rating agency and its affiliates do not otherwise provide non-ratings services to the issuer. Therefore we believe that a more sensible approach would be to require disclosure only when fees paid to a credit rating agency and its affiliates for ratings and non-ratings services aggregate to a level that would be significant to the credit rating agency and its affiliates, such as 1% or more of their consolidated revenues.

Proposed Instruction 4 to Item 202(g) of Regulation S-K

Under the Commission's proposal, issuers may have difficulty understanding when they are required to provide disclosure about preliminary ratings, and investors may have little use for the resulting disclosure. Proposed Item 202(g)(14) (and corresponding proposed amendments to Forms 20-F and N-2) would require the issuer to provide a "description of any preliminary rating of the *class of securities* that received the rating being disclosed pursuant to this Item 202(g)" when a different credit rating agency provided the preliminary rating. [emphasis supplied.] This language seems relatively straightforward: if an issuer received a preliminary rating from a different credit rating agency on the class of securities being offered, this information may well be useful to investors and should be disclosed. However, proposed Instruction 4 indicates that a preliminary rating includes "any oral or other indications of a potential rating or range of ratings . . . on a particular structure of a security even if not tied to a specific registrant or group of assets." This language appears to greatly expand the scope of information called for by paragraph (g)(14), and could encompass weeks or even months of analysis and discussion about securities that bear little relationship to the class of securities being offered. If the Commission intends for investors to actually read and make use of the new disclosure about credit ratings, we think the requirements should avoid triggering a need to disclose multiple paragraphs of marginally relevant information.

Therefore, we suggest that Instruction 4 be redrafted to focus squarely on preliminary ratings received on the class of securities being offered.

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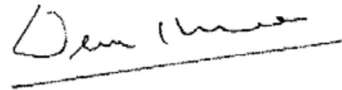
We at Ratings Services appreciate the opportunity to comment on the proposal and look forward to working with the Commission in moving towards final rulemaking. Please feel free to contact me or Rita Bolger, Senior Vice President and Associate General Counsel, Global Regulatory Affairs, at (212) 438-6602, with any questions regarding our comments.

Sincerely yours,



Deven Sharma
President
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