

MEMO# 23340

March 20, 2009

Draft ICI Comment Letter on SEC Proposed Amendments to NRSRO Rules

[23340]

March 20, 2009

TO: SEC RULES COMMITTEE No. 15-09
EQUITY MARKETS ADVISORY COMMITTEE No. 12-09
FIXED-INCOME ADVISORY COMMITTEE No. 7-0
9MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 9-09
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 10-09
INST. MONEY MARKET FUNDS ADVISORY COMMITTEE No. 10-09 RE: DRAFT ICI COMMENT
LETTER ON SEC PROPOSED AMENDMENTS TO NRSRO RULES

As we previously informed you, the Securities and Exchange Commission has re-proposed amendments to its existing rules governing the conduct of nationally recognized statistical rating organizations (“NRSROs”). [1] The rule amendments would (1) require the public disclosure of credit rating histories for all outstanding issuer paid credit ratings issued by an NRSRO and (2) prohibit an NRSRO from issuing an issuer-paid rating for a structured finance product unless the information about the product is made available to other NRSROs. The Institute has prepared the attached draft comment letter on the proposal. The most significant aspects of the letter are summarized below.

Comments on the proposal are due to the SEC by March 26, 2009. Please provide your comments on the draft letter as soon as possible but no later than March 25 to Heather Traeger by email (htraeger@ici.org) or by phone at (202) 326-5920 or to Ari Burstein by e-mail (aburstein@ici.org) or by phone at 202-371-5408.

The proposal would require the public disclosure of credit rating histories for all outstanding

issuer-paid credit ratings issued by an NRSRO. The letter states that credit rating histories can provide investors with useful information regarding the performance of an NRSRO's credit rating for a particular security and information regarding the quality and accuracy of an NRSRO's ratings as compared with other NRSROs. The letter therefore generally supports the proposed disclosure of ratings actions histories by NRSROs but questions whether the proposal, as currently structured, will provide investors with timely and sufficient information that will allow them to develop meaningful performance measurement statistics to supplement the information provided by NRSROs and to assist in their investment decisions.

The proposed amendment would provide that a rating action need not be made publicly available until 12 months after the date of the rating action. The letter opposes the proposed 12-month time lag for making information publicly available and states that such a timeframe would not meet the stated goal of the proposal to make it easier for persons to analyze the actual performance and accuracy of the NRSRO's credit ratings.

The letter notes that the Institute, in its comment letter on the SEC's prior NRSRO proposal, opposed the provision that would have provided a six-month delay before requiring disclosure of rating actions and noted that such a lengthy delay would largely defeat the purpose of the proposal and make such information stale and ineffectual for users of ratings. The letter states that the 12-month delay for publication of this information under the current proposal would exacerbate these concerns. The letter therefore urges the Commission to require the public dissemination of this information in a more timely manner that would be beneficial to investors, e.g., three months after the date of the rating action.

The proposal would apply only to issuer-paid NRSROs in recognition of the claim by some commenters that mandated disclosure of credit rating history information would impinge upon NRSROs' revenues in a way that could prove anti-competitive. The letter recommends that the proposal be applied to all credit ratings, including those issued by subscriber-paid NRSROs. The letter states that investors should be provided with the tools to assess the value of all ratings, whether issued by issuer-paid NRSROs or subscriber-paid NRSROs.

The Commission's proposal would prohibit an NRSRO from issuing a rating for a structured finance product unless the information about the product provided to the NRSRO to determine the rating, and thereafter to monitor the rating, is made available to other NRSROs.

The letter states that the Institute has long favored increased competition among NRSROs. The letter therefore supports facilitating the dissemination of increased information to other NRSROs to support the issuance of additional credit ratings. At the same time, the letter states that by proposing to limit disclosure to NRSROs only, the Commission reinforces the current system in which investors must rely on NRSROs for much of the data regarding a structured finance product. The letter therefore reiterates the Institute's prior recommendation that the Commission require that information made available to NRSROs

also be made available to investors.

The letter states that while the amount and quality of information disclosed by NRSROs is critical to investors, presenting this information in a standardized format may be just as important. To address these concerns, the letter recommends that the Commission require that NRSROs, as a condition of rating a security, provide investors with a presale report providing a specific set of standardized information for each sector of structured finance products. The letter suggests that the information to be included in the presale report could be based on a subset of information provided to an NRSRO.

Under the proposal, an issuer would be required to provide access to, or to make available, information that it provides to a hired NRSRO to any other NRSRO at the same time. The proposal would limit access to this information only to other NRSROs. While the proposal acknowledges that investors and other market participants may benefit from greater disclosure of this information, it states that the Commission believes that the more appropriate mechanism to enhance such disclosure would be to amend rules under the Securities Act.

The letter states that if the Commission believes that increased disclosure to investors can be accomplished by amending its disclosure rules, the Institute would support the enhancement of the disclosure regime for issuers of structured finance products set out in Regulation AB to accomplish this goal. Specifically, the letter recommends that the Commission require that additional information be disclosed pursuant to Regulation AB and that this information be standardized for each sector of structured finance products and disseminated in a manner that provides sufficient specificity to be meaningful. The letter recommends that, at the very least, the Commission should provide interpretive guidance on additional information that should be considered material and that a reasonable investor would consider important in its decision-making process to serve as guidance for disclosure by issuers.

The letter states that while the Institute believes that it would be beneficial for investors to receive much of the same information that issuers provide to NRSROs, we are cognizant of concerns that such disclosure may, among other things, create a chilling effect on information that an issuer may provide to an NRSRO.

To address these issues, the letter recommends that the Commission instead require public disclosure of a subset of certain standardized items provided by issuers to NRSROs in the form of a term sheet or other document, similar to the “informational and computational materials” permitted under Regulation AB. This would create a two-tier disclosure regime in which issuers would provide information to NRSROs as they currently do and issuers would distribute to investors a required template of standardized information of a more summary nature.

Ari Burstein
Senior Counsel - Securities Regulation

[Attachment](#)

endnotes

[\[1\]](#) See Memo to SEC Rules Committee No. 5-09; Equity Markets Advisory Committee No. 5-09; Municipal

Securities Advisory Committee No. 3-09; Fixed-Income Advisory Committee No. 3-09; Money Market Funds Advisory

Committee No. 4-09; and Inst. Money Market Funds Advisory Committee No. 4-09, dated February 13, 2009 [23252].

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