

MEMO# 23986

November 30, 2009

SEC Adopts Amendments to Rating Agency Disclosure Requirements

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TO: SEC RULES MEMBERS No. 129-09
EQUITY MARKETS ADVISORY COMMITTEE No. 53-09
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 57-09
FIXED-INCOME ADVISORY COMMITTEE No. 28-09
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 48-09
CLOSED-END INVESTMENT COMPANY MEMBERS No. 57-09 RE: SEC ADOPTS
AMENDMENTS TO RATING AGENCY DISCLOSURE REQUIREMENTS

The Securities and Exchange Commission has adopted a series of rule amendments that impose additional disclosure and conflict of interest requirements on nationally recognized statistical rating organizations (“NRSROs”). [\[1\]](#) The amendments are designed to address concerns about the integrity of the rating procedures and methodologies at NRSROs. NRSROs must comply with the amendments 180 days after the amendments are published in the Federal Register.

The amendments are summarized below.

Disclosure of Ratings History

The amendments require NRSROs to disclose ratings history information for all credit ratings initially determined on or after June 26, 2007, whether issuer-paid, subscriber-paid or unsolicited. [\[2\]](#) For issuer-paid ratings, each ratings action must be disclosed publicly, no

later than twelve months after it is taken. For ratings actions that are not issuer-paid, new ratings actions must be published no later than twenty-four months after it is taken. Until the Commission publishes a list of eXtensible Business Reporting Language (“XBRL”) Tags for NRSROs on its website, at which point NRSROs must make information available in the XBRL format, disclosure of ratings actions must be made in an interactive data file that uses a machine-readable format.

According to the Release, the Commission believes that the new disclosure requirements, in combination with existing disclosure requirements, will foster greater accountability and transparency for ratings performance for NRSROs and enhance competition among NRSROs by making it easier for persons to analyze the actual credit ratings performance of NRSROs. It may also facilitate the development of track records for smaller and less established NRSROs. To guard against unintended consequences from the new requirements, the Commission intends to monitor the impact of the amendments on NRSROs revenues and, if appropriate, will consider necessary modifications.

Disclosure Related to Conflicts of Interest for Structured Finance Products

The amendments require NRSROs to disclose and manage the conflict of interest of issuing or maintaining a rating for a structured finance security that was paid for by the issuer, sponsor or underwriter of the security. [\[3\]](#) An NRSRO subject to this conflict must maintain a password-protected website containing a chronological list of each structured finance security for which it is in the process of determining an initial rating, [\[4\]](#) and must identify the type of security, the name of the issuer, and the date the rating process was initiated. The NRSRO must provide free and unlimited access to the website to any NRSRO that provides it with a copy of a certification [\[5\]](#) indicating that the non-hired NRSRO has either:

- determined and maintained credit ratings for at least 10 percent of the issued securities for which it accessed information pursuant to these amendments in the calendar year prior to the year covered by the certification, if it accessed such information for ten or more issued securities; or
- not accessed information pursuant to these amendments ten or more times in the calendar year prior to the year covered by the certification.

In addition, the NRSRO must identify the website address where the issuer, sponsor, or underwriter (“arranger”) of the structured finance security represents (to the NRSRO) that it will post all information the arranger provides to the NRSRO for the purpose of determining the initial credit rating and undertaking rating surveillance. The NRSRO also must obtain from the arranger representations that it will maintain such information on a password-protected website; provide access to the website to any NRSRO that provides it with a copy of the certification; and post the information on the website at the same time such information is provided to the NRSRO.

According to the Release, the Commission believes that the amendments will improve the quality of ratings for structured finance products by making it possible for more NRSROs to rate them and, in particular, promoting the issuance of ratings by NRSROs that are not hired by the arranger for the structured finance product.

Disclosure Related to Regulation FD

The amendments will permit the disclosure of material non-public information to an NRSRO, regardless of whether the NRSRO makes its ratings publicly available, solely for the purpose of allowing the NRSRO to determine or monitor a credit rating. As discussed above, an NRSRO will be required to furnish to the Commission a certification that it will keep the information it accesses confidential and treat it as material, non-public information.

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endnotes

[1] See Amendments to Rules for Nationally Recognized Statistical Rating Organizations, SEC Release No. 34-61050 (November 23, 2009) (“Release”), available at: <http://www.sec.gov/rules/final/2009/34-61050.pdf>.

[2] This requirement is in addition to the existing ratings actions history disclosure requirement in which ratings must be published for 10 percent of ratings in each class for which the NRSRO has registered and for which it has issued 500 or more issuer-paid ratings, on a random basis, with disclosure of a new ratings action to be made no later than six months after the ratings action is taken.

[3] The amendments encompass the full range of structured finance products, including, but not limited to, securities collateralized by static and actively managed pools of loans or receivables, collateralized debt obligations, collateralized loan obligations, collateralized mortgage obligations, structured investment vehicles, synthetic collateralized debt obligations that reference debt securities or indexes, and hybrid collateralized debt obligations.

[4] The amendments do not require the NRSRO to maintain the website information about a security once the NRSRO has published the initial rating and is monitoring the rating.

[5] The amendments set forth the specific language that must be included in the annual certification which will be furnished to the Commission, and to the NRSRO and arranger when required for website access.

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