

MEMO# 23869

October 12, 2009

SEC Removes References to Credit Ratings from Certain of its Rules and Forms; Re-opens the Comment Period for Others

[23869]

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TO: COMPLIANCE MEMBERS No. 44-09
EQUITY MARKETS ADVISORY COMMITTEE No. 41-09
FIXED-INCOME ADVISORY COMMITTEE No. 20-09
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 40-09
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 46-09
SEC RULES MEMBERS No. 107-09 RE: SEC REMOVES REFERENCES TO CREDIT RATINGS
FROM CERTAIN OF ITS RULES AND FORMS; RE-OPENS THE COMMENT PERIOD FOR OTHERS

The Securities and Exchange Commission has adopted amendments to certain of its rules and forms to remove references to securities credit ratings issued by nationally recognized statistical rating organizations ("NRSROs"). [\[1\]](#) In a companion release, the SEC is re-opening the comment period for certain other proposed rule and form amendments that would eliminate additional references to NRSRO ratings. [\[2\]](#)

Final Rules

The SEC has eliminated certain references to NRSRO credit ratings in rules and forms under the Securities Exchange Act of 1934 relating to the regulation of self-regulatory organizations and alternative trading systems (Rule 3a1-1, Regulation ATS, Form ATS-R, and Form Pilot). The SEC also has eliminated references to NRSRO credit ratings in certain

rules under the Investment Company Act of 1940 that affect an investment company's ability to purchase refunded securities (Rule 5b-3) and that affect securities in underwritings in which an affiliate is participating (Rule 10f-3). The SEC believes that references to credit ratings in these rules and forms are no longer warranted as serving their intended purposes.

The effective date for the new rule amendments is November 12, 2009.

Proposing Rules; Re-Opening of Comment Period

Last year, the SEC proposed to eliminate references to NRSRO credit ratings in certain of its rules and forms. [\[3\]](#) Given regulatory developments, comments received on the proposals, and the continuing public interest in last year's proposing releases, the SEC is requesting additional public comment on certain proposed rule changes under the Investment Company Act, the Investment Advisers Act of 1940, the Securities Exchange Act, and the Securities Act of 1933 relating to the use of references to ratings issued by NRSROs.

In particular, the SEC is seeking additional comment on proposed amendments to Rules 3a-7 and 5b-3 (relating to repurchase agreements only) under the Investment Company Act and Rule 206(3)-3T under the Investment Advisers Act. [\[4\]](#) Specifically, the SEC is seeking comment on whether the rules should require, in place of existing references to credit ratings, alternate standards that would use (i) credit ratings as a minimum standard, and (ii) additional criteria that must be met with regard to evaluating the securities, such as determinations of credit quality, liquidity, or appropriateness of the security as an investment for the particular purchaser. This approach, which the SEC notes is similar to the two-step approach of existing Rule 2a-7, would be designed to help reduce undue reliance on ratings by requiring an additional evaluation of credit quality, while retaining the external or objective measure of the NRSRO rating.

The SEC also is soliciting comment on certain of its proposals relating to the use of NRSRO ratings in certain rules under the Securities Exchange Act (Regulation M, Rule 10b-10, and Rule 15c3-1 (the net capital rule)) and for proposals to replace investment grade ratings in certain eligibility criteria that permit issuers to conduct primary offerings "off the shelf" under Securities Act Rule 415 and Forms S-3 and F-3, and in other rules that refer to that eligibility criteria.

Comments are due to the SEC on or before 60 days after publication in the Federal Register.

Jane G. Heinrichs

endnotes

[1] See References to Ratings of Nationally Recognized Statistical Rating Organizations, SEC Release No. 34-60789 (October 5, 2009), available on the SEC's website at <http://sec.gov/rules/final/2009/34-60789.pdf>.

[2] See References to Ratings of Nationally Recognized Statistical Rating Organizations, SEC Release No. 33-9069 (October 5, 2009), available on the SEC's website at <http://sec.gov/rules/proposed/2009/33-9069.pdf>.

[3] See References to Ratings of Nationally Recognized Statistical Rating Organizations, SEC Release Nos. IC-28327 and 34-58070 (July 1, 2008) and Security Ratings, SEC Release No. 33-8940 (July 1, 2008).

[4] Although the SEC is continuing to consider whether to remove references to credit ratings from Rule 2a-7, it is not at this time requesting additional comment in making this determination.