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Fact Sheet

Strengthening Oversight of Credit Rating Agencies Open Meeting of the Securities and Exchange Commission Sept. 17, 2009

Overview:

The Commission approved a series of proposals designed to strengthen its oversight of credit ratings agencies, enhance disclosure and improve the quality of credit ratings. The proposals would improve the quality of ratings by requiring greater disclosure, fostering competition, helping to address conflicts of interest, shedding light on rating shopping, and promoting accountability.

Background:

Credit rating agencies are organizations that rate the creditworthiness of a company or a financial product, such as a debt security or money market instrument. These credit ratings are often considered by investors evaluating whether to purchase or sell securities.

In 2006, Congress passed the Credit Rating Agency Reform Act that provided the SEC with authority to impose registration, recordkeeping, and reporting rules on credit rating agencies registered as Nationally Recognized Statistical Rating Organizations (NRSRO). Currently, 10 credit rating agencies are registered with the Commission as NRSROs as defined by the Act.

The credit ratings issued by the 10 NRSROs are funded in two general ways: First, issuers, sponsors, or underwriters ("arrangers") can pay to have themselves or their securities rated. Second, subscribers can pay to access some or all of the NRSROs' credit ratings.

Commission Actions:

Disclosing History of Ratings Activity: The Commission voted to adopt an amendment requiring NRSROs to disclose their history of ratings actions. Such actions include upgrades, downgrades, affirmations and withdrawals. The requirement applies to any rating that the NRSRO initially made as of June 26, 2007. The disclosure, to be made no less than two years after the action is taken for subscriber-paid ratings and no less than one year after for issuer-paid ratings, needs to be made online and in a searchable format.

Ensuring All NRSROs Have Access to Similar Information: The Commission voted to adopt an amendment intended to encourage competition from other NRSROs, potentially resulting in better quality ratings. The amendment would require an NRSRO - that is paid by an arranger to rate a structured finance product - to disclose to other NRSROs that it is in the process of determining such a credit rating. The amendment would also require that the NRSRO obtain a representation from the arranger that the arranger will provide the same information to other NRSROs seeking to rate the product.

An NRSRO that wants to access information provided by an arranger would only be allowed to access that information for the purpose of determining a credit rating and only if it rates a certain percentage of products. The competing NRSRO would have to file a certification to this effect annually with the SEC.

Additionally, the Commission voted to adopt an amendment that would revise Regulation FD (Fair Disclosure) to enable issuers to allow NRSROs to access the information so the NRSROs can determine the credit rating - even if the NRSROs do not make their credit ratings publicly available for free.

Reporting on Compliance Reviews: The Commission voted to propose a rule that would require NRSROs to provide the SEC with a report describing their compliance reviews for the most recently ended fiscal year. The report would outline the steps taken by the compliance officer to administer an NRSRO's policies and practices and ensure compliance with the securities laws, describe any material compliance issues identified as a result, and describe the steps taken to rectify those issues. Finally the report would also include a list of the people within an NRSRO who were advised of those compliance issues.

Providing More Information on Conflicts of Interest: The Commission voted to propose a rule that would require NRSROs to provide additional information about potential conflicts of interest. Specifically, the proposed amendments to Form NRSRO would require:

- The percentage of the NRSRO's net revenue attributable to the 20 largest users of credit rating services of the NRSRO.
- The percentage of the NRSRO's net revenue attributable to other

services and products of the NRSRO.

Providing Additional Information About the Magnitude of Conflicts: The Commission voted to propose a new rule requiring NRSROs to make publicly available information about each person who paid for a credit rating. Under the proposed rule, NRSROs would post on their Web sites a consolidated report at the end of each fiscal year that shows:

- The percent of the net revenue earned by the NRSRO for that fiscal year for providing services and products to that person other than credit rating services.
- The relative standing of the person (top 10%, top 25%, top 50%, bottom 50%, or bottom 25%) in terms of the amount of net revenue earned by the NRSRO attributable to that person.

The proposed rule also would require the NRSRO to include the web address where this information will be posted whenever it publishes a credit rating in, among other things, a research report, press release, announcement, or Web site.

Removing References to NRSRO Credit Ratings in Rules and Forms: The Commission voted to adopt amendments that eliminate references to NRSRO credit ratings in certain SEC rules and forms.

In addition, the Commission voted to reopen the comment period on certain proposed rule changes from last year. Those changes would eliminate references to NRSROs in other rules and forms under the Exchange Act, the Investment Company Act, the Investment Advisers Act, and the Securities Act.

• [Full List of Various Rules and Forms Affected](#)

Highlighting Rating Shopping and Other Key Information: The Commission voted to propose new rules that would require, as opposed to simply allow, the disclosure of credit ratings and related information in registration statements when ratings are used in connection with selling registered securities. The proposed rule would benefit investors by requiring the issuer to describe:

- What the credit rating covers and any material limitations on the scope of the rating;
- Who paid for the credit rating, whether the credit rating agency or its affiliates provided other services to the registrant or its affiliates, and if so, the fees for such services. This would help investors assess whether

potential conflicts of interest may have influenced the rating decision;
and

- Whether any "preliminary ratings" were obtained from other rating agencies - in other words, whether there was "ratings shopping." If a preliminary rating was obtained from another rating agency, the preliminary rating would have to be disclosed. This would alert investors to the possibility of ratings inflation.

The Commission also proposed that registrants disclose any changes in a credit rating on a current report on Form 8-K.

Seeking Comments on Removing the Exemption for NRSRO Liability: The Commission voted to seeking public comment on whether it should propose to rescind a rule, Rule 436(g) under the Securities Act of 1933, which currently exempts NRSROs from certain liability. The proposed concept release notes that the Commission recognizes that the elimination of this rule could have far-reaching consequences for market participants. The Commission is not proposing any rule, but instead issuing a concept release to better understand the potential consequences of removing an exemption to the provisions of the Securities Act applicable to so-called "experts."

If this rule were rescinded, an issuer that includes a credit rating issued by an NRSRO in a registration statement would be required to file the consent of the rating agency with its registration statement. As such, the rating agency would be subject to potential Securities Act liability. Current rules already require such consent of a firm that is not an NRSRO, where that firm's credit rating is included in a registration statement.

The Rule 436(g) exemption was adopted in 1982 primarily to facilitate voluntary disclosure of credit ratings in registration statements. Prior to that time, the Commission had discouraged such disclosure. The current exemption applies only to NRSROs; other credit rating agencies are not currently covered by it. The Commission is considering whether it is appropriate to continue this exemption at this time, particularly in light of the proposal to mandate disclosure of information about credit ratings in registration statements.

<http://www.sec.gov/news/press/2009/2009-200-factsheet.htm>