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BY ELECTRONIC MAIL

Ms. Florence E. Harmon
Acting Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: *File No. S7-13-08*
Proposed Rules for Nationally
Recognized Statistical Rating Organizations

Dear Ms. Harmon:

Fitch, Inc. (“Fitch”) submits this letter in response to the request for comments of the Securities and Exchange Commission (“SEC” or the “Commission”) on the *Proposed Rules for Nationally Recognized Statistical Rating Organizations* (Release No. 34-57967; File No. S7-13-08, the “Proposed Rules”). Fitch is a nationally recognized statistical rating organization (“NRSRO”).

Set forth below are our comments on the Proposed Rules. For the convenience of the Commission, we have followed the order used by the SEC in its commentary accompanying the Proposed Rules. Please note that we have only discussed those aspects of the Proposed Rules about which we have questions or concerns.

1. Issues Relating to Enhanced Disclosure with respect to Structured Finance Products

Relevant Proposed Rule: 17g-5(a)(3)

We have advocated for some time that there should be increased public disclosure with respect to structured finance products to assist investors in conducting their own investment analysis. This would directly address the concern expressed by the SEC, and other regulators throughout the world, that investors have become too reliant on ratings when investing in structured finance products, rather than using ratings as one tool in their analysis. In order for the information to be of use to investors, it must be provided in a timely fashion – that is, the information must be available sufficiently in advance of an investor making its investment

decision, to allow time for the investor's independent analysis. At the same time, the information must be complete and detailed – for example, detailed data about the actual underlying assets, rather than summary or hypothetical data.

We agree with the Commission that an additional benefit of the disclosure of such data would be the ability for any rating agency or other market commentator to express their views as to the merits of the relevant structured finance product whether or not they are requested to rate the product. We also agree that this could assist in preventing “ratings shopping” by issuers and significantly increase market commentary from a wider variety of sources, both NRSROs and other publishers. We believe, however, that the primary purpose of such disclosure must be to increase the information flow to investors.

By proposing this Rule, we believe that the Commission is acknowledging that the information to be disclosed¹ is material to the investors' investment decision. This, in turn, implies that the current disclosure regime for issuers with respect to structured finance products is inadequate. We agree, but believe the SEC has chosen the wrong means to accomplish the goal of enhanced disclosure to investors.

In its commentary with respect to this Proposed Rule, the SEC accepts that “[i]t may be that the issuer through the arranger and trustee would be in the best positions to disclose the information.” Indeed, in the context of its analysis of the Paperwork Reduction Act, the SEC states its preliminary belief that “in order to avoid conflicts with Securities Act prohibitions on general solicitations as well as to avoid making the NRSRO liable for the accuracy of information that would originally be supplied by the arrangers and trustees of structured products, this information would likely be disclosed by those arrangers and trustees”. The logical conclusion would seem, therefore, that the SEC would impose directly on the issuer, arranger and/or trustee – that is, the keepers and/or producers of the relevant information – the obligation to disclose.

The SEC explains that it “is not proposing to specify the party – NRSRO, arranger, issuer, depositor, or trustee – that would need to disclose the information”. Instead, it appears that the SEC intends to impose on the NRSRO a duty to require the issuer/arranger/trustee/depositor to disclose the relevant information in accordance with the Proposed Rules, and somehow to enforce this requirement. We respectfully submit that it is inconsistent for the SEC to be concerned that NRSROs not act as gatekeepers within the securities markets, yet at the same time expect NRSROs to police disclosure of material

¹ In Proposed Rule 17g-5(a)(3)(i)(A) (and similarly in Proposed Rule 17g-5(a)(3)(ii) with respect to surveillance), the SEC describes the information to be disclosed as “[a]ll information provided to the nationally recognized statistical rating organization by the issuer, underwriter, sponsor, depositor, or trustee that is **used** in determining the initial credit rating. . .” (emphasis added). The SEC states that it “recognizes that the NRSRO would define the information that it uses for purposes of generating credit ratings. . .” Rather than relying on a definition of use, we believe it would be simpler and clearer for the SEC to refer to “[a]ll information provided to the nationally recognized statistical rating organization by the issuer, underwriter, sponsor, depositor, or trustee **for use by the nationally recognized statistical rating organization in its ratings analysis. . .**” (with our proposed change highlighted in bold).

information by third parties – especially given that NRSROs have no effective power to police any such disclosure requirement. At best, as the SEC recognizes in its commentary, we could obtain a representation from the disclosing party that it will make the relevant information publicly available at the required time.

We, therefore, strongly believe that the SEC should use its rulemaking powers under the securities laws to require that the issuer/arranger/trustee/depositor disclose publicly all information provided by it to any NRSRO before such time as investors make their investment decisions. With respect to exempt and offshore issuance, the SEC could also require that, as a condition to benefiting from the relevant private placement and resale exemptions under US securities laws, the issuer/arranger/trustee/depositor must make the necessary information available to investors prior to such time as investors make their investment decisions.

An alternative, although we believe less satisfactory, approach would be for the SEC to use its rulemaking powers to require that issuer/arranger/trustee/depositor make this information available to any NRSRO that requests it.

If the SEC decides to require that NRSROs must disclose this information, then the SEC should modify the Proposed Rule in the following ways:

1. The final rule should explicitly recognize that an NRSRO can address the conflict of interest specified in Proposed Rule 17g-5(b)(9) by obtaining a representation from the party requesting the rating that it will disclose, or cause to be disclosed, to investors all information provided to such NRSRO for use by such NRSRO in its rating analysis of the relevant structured finance product.
2. The final rule should create a safe harbor, making it clear that the NRSRO has no obligation to verify whether the third party has complied with the representation, since NRSROs will not be in a position to verify compliance or impose sanctions for failure to comply, as the SEC would be if the SEC exerted its authority. The final rule also should make it clear that the NRSRO need do nothing further to address this conflict of interest.
3. The final rule should specify that the NRSROs have no liability with respect to the actual disclosure and/or the contents of the disclosure.
4. The final rule should state specifically that the required disclosure will not jeopardize any exemptions from the US securities laws that would otherwise be available to the relevant transaction.

The SEC also asks a series of questions related to this Proposed Rule. We have addressed some of those questions in the preceding paragraphs. With respect to certain of the remaining questions, we have the following observations. First, the SEC asks whether NRSROs and others should make certain disclosure with respect to verification of information related to structured finance products. We point out that the latest amendments to the IOSCO Code of

Conduct Fundamentals for Credit Rating Agencies (the “IOSCO Fundamentals”) address this point of verification. We would ask that the SEC ensure that any additional rule it might make on this subject is consistent with the IOSCO Fundamentals. Second, the SEC asks about the confidential nature of some of the information disclosed to NRSROs. In that context, we would point out our belief that the Proposed Rule might cause the disclosing party (whether an NRSRO or another party) to violate foreign law. We also note that others have made similar observations in their comments to the SEC on the Proposed Rules. The final rules should include an express provision excusing any failure to disclose that results from compliance with the laws of other countries.

2. **Issues Relating to a New Prohibited Conflict of Interest – Recommendations**

Relevant Proposed Rule: 17g-5(c)(5)

This new Proposed Rule would prohibit NRSROs from issuing or maintaining a rating with respect to an obligor or security where “. . .the nationally recognized statistical rating organization or a person associated with the nationally recognized statistical rating organization made recommendations to the obligor or the issuer, underwriter, or sponsor of the security about the corporate or legal structure, assets, liability, or activities of the obligor or issuer of the security.”

While we support the Proposed Rule and already prohibit such conduct, we believe that this language is very broad and vague. We note that the SEC, in its commentary with respect to this Proposed Rule, describes this prohibition as applying to recommendations “. . .about how to obtain a desired credit rating during the rating process.” We believe this is a better way to formulate such a prohibition. Accordingly, we suggest that the Proposed Rule should be amended to delete the phrase “. . . recommendations to the obligor or the issuer, underwriter, or sponsor of the security about the corporate or legal structure, assets, liability, or activities of the obligor or issuer of the security.” That phrase should be replaced with “. . . recommendations to the obligor or the issuer, underwriter, or sponsor of the security about how to obtain a desired credit rating during the rating process for such obligor or security.”²

We also believe that the SEC should specifically clarify in its final rules that NRSROs may continue to respond to issuer inquiries regarding the potential impact that different scenarios could have on ratings. We believe such interaction is completely appropriate so long as the NRSRO is merely responding to a specific inquiry and not offering its own advice on how to achieve a desired credit rating. We believe it is imperative that we be able to answer such inquiries in order to promote transparency and to avoid the perception that NRSROs issue ratings through a so-called “black box.”

Finally, the term “person associated” with an NRSRO would pick up our parent and sister companies who are on the other side of a firewall, and who are not involved in the issuing of ratings. We do not know what recommendations they may be providing to their clients, thus it

² We note that this Proposed Rule with our amendment is consistent with new section 1.14-1 of the IOSCO Fundamentals, which provides that a rating agency “should prohibit its analysts from making proposals or recommendations regarding the design of structured finance products that a [rating agency] rates.”

would be impossible for us to know when they have engaged in behavior that would trigger this prohibition. Moreover, the fact that we do not know this information means that no conflict could exist. We would therefore ask that the final rules explicitly exclude persons under common control with the NRSRO from the term “person associated with the NRSRO” as used in this Proposed Rule.

3. Issues Relating to a New Prohibited Conflict of Interest – Fees

Relevant Proposed Rule: 17g-5(c)(6)

This new Proposed Rule would prohibit certain persons within the NRSRO from being involved in fee discussions/negotiations. We agree with the principle behind this Proposed Rule, however, the use of the verb “discuss” could be viewed as capturing perfectly acceptable behavior. We note that the Proposed Rule differs from the approach to this point taken by the IOSCO Fundamentals (as recently amended). Section 2.12 of the IOSCO Fundamentals provides the following: “A CRA should not have employees who are directly involved in the rating process initiate, or participate in, discussions regarding fees or payments with any entity they rate.” Given that rating agencies conduct their business on a global basis, in accordance with globally applicable codes of conduct, we, and other market participants and users of ratings, have stressed the value of applying consistent standards to rating agencies. To that end, we would ask the Commission to modify the Proposed Rule to align it with the IOSCO Fundamentals language – referring specifically to discussions with the rated entity.

Alternatively, we believe the SEC should amend the Proposed Rule slightly to make it clearer that the rule permits senior managers to discuss fees internally, as part of their oversight of the NRSRO’s business. For example, the non-analytical staff negotiating fee arrangements will need guidance from senior analytical staff as to the amount of analytical work involved with respect to any given rating, to determine what fee would be appropriate. In addition, senior managers – while not involved in individual fee negotiations – will need to understand the revenue flow and profitability of the NRSRO in order to manage the NRSRO’s overall business. We would therefore suggest amending this Proposed Rule by adding the following proviso at the end:

“; provided, however, that it shall not be a prohibited conflict of interest for the nationally recognized statistical rating organization to issue or maintain a credit rating where any senior manager of the nationally recognized statistical rating organization has discussed any fee paid or to be paid for a rating with non-analytical staff and/or any other senior manager of the nationally recognized statistical rating organization for the purposes of determining the magnitude and complexity of the related analytical work and/or in the context of the management of the business of the nationally recognized statistical rating organization.”

Finally, the SEC asks the question as to whether there should be an exemption from this Proposed Rule for “small NRSROs.” We strongly disagree with granting an exemption from

this, or any other, rule based on the size of the organization. The SEC must apply the Proposed Rules uniformly, to all NRSROs, or the Proposed Rules will not achieve their purpose.

4. **Issues Relating to New Recordkeeping/Retention/Disclosure – Rating Actions**

Relevant Proposed Rules: 17g-2(a)(8) and 17g-2(d)

We strongly agree with the need for increased transparency for investors. To that end, we agree with the principle that each NRSRO should maintain a record of its rating actions and make public such record. We are concerned, however, about some of the practical aspects, and commercial implications, of these two Proposed Rules.

First of all, we want to clarify that the reference to “current credit rating” in Proposed Rule 17g-2(a)(8) would not include ratings that have been, or will in the future be, withdrawn for any reason (including, without limitation, because the securities/issuers are defaulted). Second, some of our ratings have very long histories, in certain cases dating from the beginning of the last century. It would be unduly burdensome to put into an electronic file all historical information that an NRSRO currently keeps in paper form. We would therefore suggest that Proposed Rule 17g-2(d) be amended, as follows: “. . .the records required to be retained pursuant to paragraph (a)(8) of this section, **other than any such record that, as of the date of enactment of this Rule, is not in an electronic format,**. . .”(proposed amendment in bold).

In a similar vein, some of our prior records do not include CUSIPs or CIK numbers. It would be unduly time consuming to go back through all of our records to add in such numbers. In addition, with respect to CUSIP numbers, as the SEC is aware, private parties control the use and redistribution of these numbers. We believe that the proposed requirements for NRSROs to use CUSIP numbers and to make them freely available would only be workable if these private parties allowed all NRSROs to use and redistribute the CUSIP numbers, as required under these Proposed Rules, free of charge and without any other restrictions. To address these two points, we would therefore propose (i) that Proposed Rule 17g-2(a)(8) be amended to add the following proviso at the end:

“; provided that the requirement to include a CUSIP or a CIK number shall only apply with respect to rating actions taken after the date of enactment of this Rule; and provided further that the nationally recognized statistical rating organization shall only be obliged to include CUSIP numbers if it has the right to use the CUSIP numbers, in accordance with this Rule, free of charge and without any other restrictions;”

and (ii) that Proposed Rule 17g-2(d) be amended to add the following proviso at the end:

“; provided that the nationally recognized statistical rating organization shall only be obliged to make CUSIP numbers publicly available on its corporate Web site if it has the right to do so free of charge and without any other restrictions.”

We appreciate that the SEC understands that many NRSROs seek to commercialize some or all of this data. We, therefore, endorse the principle that the NRSROs should only be required

to disclose such information after a certain time lag. We strongly believe that time lag should be no shorter than six months. We also believe that the proposed categories of data the Proposed Rule requires the NRSROs provide are sufficient for the SEC's objective, without having a significant impact on our subscription revenues. We are concerned, however, that requiring us to disclose more detailed data, free of charge, could have serious commercial consequences for us. We do think that the NRSROs should sort the data by (at least) the categories of rating for which the NRSRO is registered.

With respect to who is in the best position to develop the taxonomy, we believe that the SEC should develop standard taxonomy that all NRSROs would use – with input from the NRSROs as needed. This will facilitate comparability among the NRSROs. The NRSROs, of course, would need to link their actual defined rating terms to this standard taxonomy. We are not certain how long it will take, however, we estimate that, once the taxonomy is available, we will need six months to develop the necessary systems and to test them adequately. We also agree with the suggestion that the SEC should itself institute a test phase; with respect to how long that phase should be, we believe that the SEC's experience with EDGAR would be a good guide. We do not believe that the SEC should host our information on some kind of central database. It is very important to us that we maintain a minimum level of control over our data, and we cannot ensure that control if the SEC hosts our data. We do not believe this should result in any kind of impediment to access. To ensure adequate access, the final rules should require that any member of the public can easily access this information, without having to pay any fee or be subjected to any other kind of soft or hard barrier (other than registration on the NRSRO's website and an agreement to be subject to the standard terms of usage).

5. Issues Relating to a New Recordkeeping and Retention Requirement – Models

Relevant Proposed Rule: 17g-2(a)(2)(iii)
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Assuming that the SEC will maintain its current position as set forth in the commentary – that it will allow each NRSRO to determine whether a model is a “substantive” component in the process of determining the rating, as well as what constitutes a “material” difference between the model-implied rating and the actual rating – we have no objection to this Proposed Rule.

We do have one observation to make with respect to the role of models in our rating process. A model output does not “imply” a credit rating. As we make clear in all our publications, our ratings consist of qualitative and quantitative factors; a model output is just one of those factors – a synthesis of certain quantitative factors and assumptions. A rating committee is perfectly entitled to weigh the impact of the model output, as it would with any other factor that goes into a credit rating. We believe that the final rule should make clear that it is perfectly appropriate for a final credit rating issued to be different from the credit rating “implied by the model.”

6. Issues Relating to a New Record Retention Requirement – Complaints

Relevant Proposed Rule: 17g-2(b)(8)

With respect to the question posed concerning public disclosure of when an analyst has been reassigned from rating an issuer/securities, we believe such disclosure is unnecessary and burdensome. As in any business, Fitch periodically reassigns analysts and replaces others because of attrition. To monitor and disclose such normal activities would add no additional information. As a practical matter, Fitch provides the contact information for the analysts with respect to each rating in our rating commentary and reports. To the extent that the SEC intends the question to address instances where issuers demand that NRSROs reassign analysts, we believe the record keeping requirements of the Proposed Rule already address that issue.

7. Issues Relating to Amendments to Form NRSRO – Exhibit 1

Relevant Proposed Exhibit 1

A number of additional disclosures would now be required under Exhibit 1 to Form NRSRO. We completely agree with this requirement for enhanced transparency from the NRSROs. We do have a few practical concerns with respect to the execution of some of these required disclosures.

First, we support the disclosure of default and transition studies for each asset class for which the NRSRO is seeking/has obtained registration. We believe, however, with respect to the broad category of issuers of government securities, municipal securities and foreign government securities, that investors would find greater granularity more meaningful, since we believe that there are different types of investors within this category. In addition, the statistics with respect to the much greater amount of public finance issuance in the United States would overwhelm the sovereign and international public finance data. We note that the Commission itself poses the question of whether there should be more granularity in the performance statistics required. To that end, we would propose providing separate default and transition studies for each of sovereigns, United States public finance and international public finance. We have no objection, with respect to the asset-backed category, of providing default and transition studies broken out by type of security – i.e., RMBS, CMBS, CDO and other ABS. We would, however, caution the Commission about defining any categories in too narrow a way so as to render the universe of underlying data points too small to provide meaningful performance statistics. On the other hand, the redrafted Exhibit adds a new category with respect to which NRSROs should produce default and transition studies: “any other broad class of credit rating issued by the Applicant/NRSRO.” We believe that this requirement is not helpful, since it would potentially capture a variety of operational and qualitative scales, such as servicer and bank support ratings, for which default and/or transition studies are of limited or no value.

We also have no objection to the requirement for 1-, 3- and 10-year default and transition studies. We do point out, though, that these studies can provide very different results depending on the parameters used – for example, a determination of when a year begins and ends, and the

weighting given to different cohorts. Without a standardized approach to these types of parameters, investors would find it difficult to compare these studies from different NRSROs. We note that the SEC will require each NRSRO to provide explanations of how it produced its studies, including inputs, time horizons and metrics used. We believe, however, that the SEC should go further and standardize the parameters for the creation of such studies. We do not think this impinges on the rating methodologies and criteria used by NRSROs. This requirement would simply standardize how performance is measured. We do not believe, however, that the SEC should require an NRSRO to disclose how its ratings performed relative to credit spreads, since ratings are not intended to, and do not, comment on price movements. Indeed, we see no value in comparing ratings to any other metric that is not part of what ratings mean to capture.

Our final comments on the proposed changes to Exhibit 1 relate to the requirement for default statistics to track defaults relative to initial ratings, and to incorporate defaults that occur after a rating is withdrawn. With respect to the former proposed requirement, it would be relatively straightforward to track structured finance ratings relative to the initial ratings. There are, however, two major distinctions between corporate and structured finance ratings in this regard. Firstly, corporate entities and banks are not closed-end structures with a finite and predetermined economic life, but continuing economic entities. Mergers, acquisitions, changes in strategy, and geographical expansion or contraction all render “initial” ratings ultimately less meaningful – as tracking the ratings for AT&T Corp., initially rated by Fitch at AA+ in 1984, would illustrate. Secondly, if one were to try and compare initial ratings assigned across rating agencies, a rating may have been assigned at any point in that corporation’s history – an agency assigning ratings to AT&T Corporation may have assigned initial ratings in the “AA” category in the 1980s, in speculative grade in the middle of this decade, or in the “A” category if initiated today. Moreover, we note that our default and transition studies, by definition, compare what happens to the rating against a clearly defined starting point – whether one year, three years or ten years previously (using the new SEC requirements for such studies). We therefore request that the reference to “initial ratings” be limited to structured finance ratings.

With respect to tracking withdrawn ratings, our ability to incorporate a default that occurs after we have withdrawn a related rating depends entirely on our ability to obtain information that the default has occurred. In our experience, obtaining such information is relatively easy with respect to financial institutions and industrials, however, that might not be the case in certain jurisdictions where the amount of publicly available information is limited. In the case of structured finance ratings, we have found it virtually impossible to discover whether a default has occurred. We would thus request that the following language in bold be added as indicated: “. . . **undisputed** defaults that occur after a credit rating is withdrawn **which are known to the nationally recognized statistical rating organization**”. Finally, given the large number of ratings that we have withdrawn recently, resulting from the withdrawal of the ratings of certain bond insurers, it would be unduly burdensome for us to continue to track these ratings, even if the relevant default information were readily available to us. We therefore propose to add this feature to our default and transition studies only going forward from the date of enactment of this proposed amendment to Form NRSRO.

We also believe it would be appropriate for these new requirements to be applicable after a grace period and we request that the new requirements apply to transition and default studies published beginning one year after the enactment of the final rules.

8. Issues Relating to New Annual Report to be Furnished – Rating Actions

Relevant Proposed Rules: 17g-3(a)(6) and 17g-3(b)

With respect to the questions posed about the desirability of an “early warning” report, if the SEC determines that such a report is desirable, the final rule must make clear what is meant by a “class” and establish a measurement period (e.g., six months, one year, etc.). The final rule also ought to make clear how the SEC intends to use such information.

9. Issues Relating to New Requirement for a Report – Asset-backed Securities

Relevant Proposed Rule: 17g-7

We have several observations with respect to this proposed requirement for a report, and the related exemption. First, the SEC, in its related commentary, seems to imply that this requirement for a report could be fulfilled through the publication of a single standard report, applicable to all relevant ratings, and updated on a regular basis. We completely agree with this approach, and ask for clarification from the SEC that our interpretation is correct. With respect to the report itself, our “publication” of any such rating consists of the issuance of a rating action commentary published on our website. We would therefore assume that the requirement to “attach” the report could be fulfilled by including a link, in the rating action commentary, to where the report can be found on our public website. Again, we would welcome clarification of this point. Finally, we note this Proposed Rule states that such report must describe how the methodology used to determine such a rating differs from the methodology used to determine the ratings of “any” other type of obligor/security, and how the associated credit risk characteristics differ from those of “any” other type of obligor/security. We believe that the use of the word “any” renders this requirement virtually impossible to fulfill, and would therefore request that the comparison be made to corporate obligors and their securities.

With respect to the exemption, we do not believe that a different symbol for structured finance ratings makes sense. More importantly, based on feedback we (and other NRSROs) have received from interested parties, most industry participants are not convinced as to the value of adding an asset class descriptor to ratings of structured finance securities. We believe that market participants instead, might find it more useful for a structured finance rating to be accompanied by any of a variety of complementary ratings and indicators – for example, with

respect to loss given default/loss severity, collateral quality assessment and rating transition probability and volatility.³

Thank you for giving us the opportunity to provide our comments. We hope you find them useful, and that you will give them due consideration. Please call me at (212) 908-0626 with any questions that you might have on our comments or to discuss this matter further at your convenience.

Very truly yours,



Charles D. Brown
General Counsel

³ We have recently published a global special report on this subject: "Fitch Proposals for Complementary Ratings and Indicators to Structured Finance Ratings" (June 27, 2008). This special report has been published as a request for feedback, and we intend to publish a summary of all comments we receive.