

Neal E. Sullivan
Direct Phone: 202.373.6159
Direct Fax: 202.373.6459
neal.sullivan@bingham.com

April 30, 2010

FOIA Confidential Treatment Requested

Via E-Mail and Federal Express

Michael Macchiaroli
Associate Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Amendments to Rule 17g-5(a)(3)

Dear Mr. Macchiaroli:

On behalf of our client, Rating and Investment Information, Inc. ("R&I"), we respectfully request that the Commission issue an interpretation as to the scope of Rule 17g-5(a)(3)¹.

On December 4, 2009, the U.S. Securities and Exchange Commission ("Commission") published amendments to the rules governing nationally recognized statistical rating organizations ("NRSROs"), and in particular adopted new Rule 17g-5(a)(3).² Rule 17g-5(a)(3) requires NRSROs that are hired by an arranger to rate a structured product to (1) disclose on a password-protected Internet Web site "each . . . security or money market instrument for which it is currently in the process of determining an initial credit rating," as well as certain information about each security or money market instrument, so that such information is accessible to certain other NRSROs, and (2) obtain representations from "the issuer, sponsor, or underwriter of each . . . security or money market instrument . . . that the issuer, sponsor, or underwriter will maintain the [information given to the hired NRSRO] at an identified password-protected Internet Web site that presents the information in a manner indicating which information currently should be relied on to determine or monitor the credit rating" and that the sponsor, issuer, or underwriter will make such information available to non-hired NRSROs that have furnished the

¹ 17 CFR 240.17g-5(a)(3).

² See Securities Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009) ("Adopting Release").

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000
F 202.373.6001
bingham.com

A/73364427.2

Commission with the aforementioned certification.³ Any NRSRO wishing to access the aforementioned information would be required to complete and submit to the Commission an annual certification, pursuant to Rule 17g-5(e).

Rule 17g-5(a)(3) is silent on whether the scope of the rule is limited to offerings in the United States or if it extends to all offerings across the world by foreign issuers to non-U.S. persons ("Foreign Offerings"). In R&I's comment letter, dated March 26, 2009, R&I expressed concern that "[i]f re-proposed Rule 17g-5(a)(3) [was] adopted by the Commission, as proposed, arrangers of Japanese securities or money-market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument . . . , would become subject to disclosure requirements, to which they are not legally bound, simply due to their decision to hire an NRSRO to rate their securities."⁴ In its comment letter, R&I proposed that "Foreign Offerings be explicitly exempted from the re-proposed Rule 17g-5(a)(3) disclosure requirements."⁵ R&I's comment was not addressed in the Commission's Adopting Release.

Issuers and arrangers of asset-backed securities in Japan are concerned about the application of Rule 17g-5(a)(3) to their transactions. Such issuers and arrangers are not prepared to comply with Rule 17g-5(a)(3) on June 2, 2010 and are concerned that they will be prohibited from issuing asset-backed securities after June 2, 2010 if they are unable to comply with the Rule. Due to the inability of issuers and arrangers in Japan to comply with Rule 17g-5(a)(3) on June 2, 2010, and to prevent a significant market disruption, R&I may be forced to withdraw from registration as an NRSRO for asset-backed securities if the Commission interprets Rule 17g-5(a)(3) to apply to Foreign Offerings.

If R&I withdraws its registration as an NRSRO for asset-backed securities, it is R&I's understanding that R&I would be released from the disclosure obligations of Rule 17g-5(a)(3) and the requirement to disclose rating action information for asset-backed securities under Rules 17g-2(d)(2) and (3)(i). It is also R&I's understanding that the issuers and arrangers of asset-backed securities it rates would also be released from the Rule 17g-5 disclosure obligations so long as the issuer or arranger of asset-backed securities does not hire another NRSRO to rate its securities. If R&I determines that it

³ See 17 CFR 240.17g-5(a)(3)(i) and (iii).

⁴ See Letter to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission, regarding S7-04-09 - Re-Proposed Rules for Nationally Recognized Statistical Rating Organizations, from Hidetaka Tanaka, Senior Executive Managing Director, R&I, dated March 26, 2009.

⁵ See *id.*

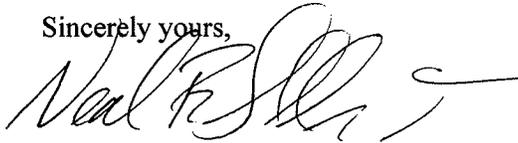
Michael Macchiaroli
April 30, 2010
Page 3

must withdraw its registration as an NRSRO for asset-backed securities, it is R&I's understanding that it can re-apply in the future to become a registered NRSRO for asset-backed securities.

In light of these issues, we respectfully request that the Commission issue an interpretation in writing as to the scope of Rule 17g-5(a)(3) and in particular whether Foreign Offerings are exempted from the Rule 17g-5(a)(3) disclosure requirements.

Please do not hesitate to contact me with any questions you might have or if you would like to discuss this issue further.

Sincerely yours,



Neal E. Sullivan

cc: Mr. Robert Cook, Director, Division of Trading and Markets
Mr. James Brigagliano, Deputy Director, Division of Trading and Markets
Mr. Randall Roy, Assistant Director, Division of Trading and Markets
Ms. Rose Wells, Special Counsel, Division of Trading and Markets
Mr. Masahiro Kambe, Senior Managing Director, R&I