資料１０

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  – 主要な各国の金融監督当局の間で、円滑な情報交換がなされる仕組み等も、効率的な監督の観点からご検討いただきたいと考えます。

> 規模、本社所在地等に拘わらず全ての格付機関に対して同一のルールが適用されることが重要と考えます。

> （添付：SECの格付規制改正草案および欧州委員会による格付規制案に対する弊社意見）

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July 25, 2008

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 disclosed[1] 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. <u>Issues Relating to a New Recordkeeping and Retention Requirement – Models</u>

Relevant Proposed Rule: 17g-2(a)(2)(iii)

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.

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5 September 2008

BY ELECTRONIC MAIL

European Commission
Directorate-General Internal Market and Services
Rue du Spa 2 03/079
B-1049 Brussels
Belgium

Re: European Commission Draft Directive/Regulation with respect to the Authorisation, Operation and Supervision of Credit Rating Agencies

Ladies and Gentlemen:

Fitch Ratings ("Fitch") submits this letter, on behalf of itself and its subsidiaries and rating affiliates, in response to the request for consultation from the European Commission (the "Commission") on the draft Directive/Regulation with respect to the authorisation, operation and supervision of credit rating agencies (the "Proposal").

We agree that regulatory authorities have a legitimate interest in monitoring compliance by rating agencies ("CRAs) with their own Codes of Conduct. Indeed, countries throughout the world have adopted some form of formal oversight. Accordingly, we understand the Commission's desire to provide for a European system of authorisation and oversight for CRAs active in Europe. We, however, do believe that the optimal result for all interested parties – regulators, investors, issuers, market intermediaries and CRAs – would be a harmonized global system of oversight, based on a globally agreed set of principles. It is our hope that the authorisation and oversight system ultimately adopted in Europe will be harmonized with other global systems and based on such principles.

In that light, set forth below are our comments on the Proposal. Fitch has three primary areas we believe should be addressed in any final Directive/Regulation, as well as several observations on the practical aspects of parts of the Proposal.

1. Rating Agencies' Should Determine and Choose Methodology and Decide Ratings

The oversight regime must respect and support the independence of rating agency opinions.

We note the Commission's statement, in its Introductory Remarks, that the proposed substantive requirements on CRAs ". . . do not interfere with the content of ratings, for which the CRAs retain full responsibility." We wholeheartedly agree that the cornerstone of any regulatory approach with respect to CRAs is an acceptance by the regulators that their supervision should not, in any way, intrude (or appear to intrude) into the actual substance of opinions determined by the CRAs or the content or choice of rating methodology. Rather regulation should concern oversight of the process to assign ratings and adopt and modify methodologies.

This need for CRA independence – an independence that places the CRA and not the regulator at "moral hazard" for its rating decisions – has been the conclusion of the drafters of legislation in all major market jurisdictions that do have some form of regulation of CRAs. For example, as the Commission is aware, independence is one of the six core criteria that must be fulfilled by a CRA to be recognised as an external credit assessment institution under the Capital Requirements Directive.

This independence, including independence from regulatory authorities deciding how "balanced" a rating must be, is what the market wants. Users of ratings value them precisely because ratings are independent, unaffiliated views.

We therefore propose that, in the text of the Proposal, this commitment to non-interference is made absolutely clear through a prohibition on the ability of any relevant competent authority to "regulate the substance of credit ratings or the procedures and methodologies by which any [CRA] determines credit ratings."[1] This is the language that the U.S. Congress decided was appropriate to protect the independence of CRAs and we see no reason why that independence should be less protected in Europe.

2. Consistent Regulatory Structure

The oversight regime should provide a "one-stop-shop", as proposed by the Commission, measuring CRA compliance with globally acknowledged standards of best practice.

<u>Global consistency</u>
As we and other commentators have noted in the past, the rating agency business is a global business. Our published ratings can be used, as noted by the Commission in its introductory remarks, "by an indefinite number of possible addressees on the entire EU territory". We

[1] The Credit Rating Agency Reform Act of 2006, Section 15E of the U.S. Securities Exchange Act of 1934.

therefore believe that there needs to be a globally consistent approach to the oversight of CRAs. Moreover, different approaches in different jurisdictions would increase barriers to entry, and thereby impair healthy competition.

Similarly, we believe that, to the extent IOSCO has examined issues covered by the Proposal and developed approaches to deal with these issues in its Code of Conduct Fundamentals for Credit Rating Agencies (the "IOSCO Fundamentals"), the Proposal should use the language of the IOSCO Fundamentals to the greatest extent possible. The IOSCO Fundamentals are the result of a long and detailed consultation process and reflect the agreed views of regulators and market participants throughout the world. As both IOSCO and CESR have pointed out, we (and the other large global CRAs) have adopted Codes of Conduct that follow the IOSCO Fundamentals. It would be unduly burdensome for CRAs to maintain different policies and procedures only within the EU to reflect variations made to the IOSCO language. We indicate later in our letter where there are material discrepancies between the Proposal and the IOSCO Fundamentals.

Choice of supervisory structure

Based solely on the broad outlines of Option 1 and Option 2 contained within the Proposal, Fitch is indifferent as to which option is ultimately chosen by the Commission, provided that the result is truly one stop shopping for authorisation of the activities of the entire CRA group members and a requirement for the CRA group to deal principally with only one supervisor. The burden of responding to duplicative but not identical oversight cannot be overstated. As currently proposed, neither Option 1 nor Option 2 adequately fulfils these basic criteria. In light of this, we have the following specific points:

We believe that the Commission's approach should result in a set of uniform rules, applied consistently throughout the EU. To that end, we believe that a Regulation would be more appropriate than a Directive, given that, in implementing a Directive, each Member State would have a certain amount of leeway, which could lead to disparities among the resulting national laws. Furthermore, the Regulation should apply to all CRAs whose ratings are used, for whatever purposes, within the EU – this will ensure a level playing field for all CRAs and avoid confusion within the marketplace as to which CRAs are subject to the Regulation.

With respect to the authorisation process, the determination of a CRA's home Member State should be based on a clear set of specified criteria. In line with the Commission's proposals under both options, the main criterion should be the location of the CRA's principal place of business in the EU. Determination of what constitutes a "principal place of business" should be based on the following factors: (i) the EU location of the majority of the CRA's senior management, (ii) the EU location with the largest number of employees and (iii) the EU office that receives the largest share of revenues.

We note that approval by a CRA's home Member State will mean that the CRA will be authorised through a so-called passport approach to do business in other Member States, either on a cross-border basis or through the establishment of branches. Since many CRAs already operate throughout the EU, we welcome the creation of such a passport. We think it important,

however, that the passport extends to EU subsidiaries of the authorised CRA, whether within or outside the home Member State (similar to the optional regime that exists for consolidated credit institutions – Article 131 of Directive 2006/48/EC – or pursuant to the Helsinki Protocol on the supervision of insurance groups). Moreover, we believe that these subsidiaries should be supervised by the competent authorities of the home Member State of the authorised CRA (which would act as the "lead supervisor"), rather than those of the Member States in which such subsidiaries are located. To do otherwise would unnecessarily discriminate among the various ways in which a group might structure itself for tax and accounting purposes and ignore the operational reality of how ratings are assigned.

We believe that having one single EU regulator for all the members of a CRA group, and thus consistent regulatory treatment of all the relevant CRA group members, is the only way to achieve the Commission's stated goal, in its introductory remarks, to "create a one-stop-shop system for CRAs that wish to operate within the EU". This approach is also consistent with how CRAs run their businesses. Our operations are not dependent on geographic location: all employees of the Fitch Ratings group, regardless of the identity and legal form of their employer (branch, subsidiary, etc.), must follow exactly the same Code of Conduct and related policies and procedures, and apply the same rating criteria and methodologies, and we believe that the same is true for other CRAs. For example, a Fitch rating committee will often be made up of analysts from across the EU and other parts of the world, employed by different corporate entities. Moreover we do not have Fitch France ratings, Fitch Deutschland ratings, etc. – we have only Fitch ratings. The competent authorities of the host Member States would still be involved via a "college of supervisors", as set forth in the Proposal, that would act as a forum for information exchange, discussion and provision of advice.

Standard against which to judge the CRA

The standard against which CRAs should be judged, in the context of the Proposal, should be the same in all Member States, and should be clearly specified in the Proposal. We agree with the standard posited in Article 21(1): compliance with the provisions of the Proposal. We note, however, that additional standards seem to be created by Articles 21(3) and 22.

Article 21(3) refers to Member States providing for sanctions against CRAs "in case of gross malpractice or lack of due diligence". This language appears to be contrary to what is set forth in Article 4 of the Proposal (prohibiting Member States from imposing requirements on CRAs in respect of matters covered by the Proposal) and opens the door for the enactment of unspecified and divergent laws by each Member State. There is no standard of what would constitute malpractice or gross malpractice for a CRA and an extreme diversity of views could arise. Similarly, the phrase "due diligence" could mean anything from minimal inquiry to full scale re-audit and re-verification even if duplicative of work done by others; whether there would be, in any given circumstances, a "lack" thereof would be very subjective. Moreover, the Proposal itself appears to be inconsistent in its own references to due diligence (in Articles 12(1) and Section B.I.3 and Section B.II.2 of Annex II). Article 12(1) should be amended to track that part of Section 1.7 of the IOSCO Fundamentals on which it is based: "A CRA should adopt reasonable measures so that the information it uses in assigning a rating is of sufficient quality to

support a credible rating." Article 12(1) should also reflect the language of Section 3.5(c) of the IOSCO Fundamentals – "[a] CRA should clearly indicate . . . the limits to which the CRA verifies information provided to it by the issuer or originator of a rated security." These changes would also make Article 12(1) consistent with the referenced sections of Annex II, which provide more detail on what such "reasonable measures" would be.

Article 22 of the Proposal would allow host Member States to take action for the violation of yet another undefined standard: the host Member State may intervene "to protect investors and the proper functioning of its markets" – even though the home Member State has no obligation, under the Proposal, to undertake such protections. Moreover, using investor protection and/or the proper functioning of the markets as the yardstick by which to judge the behaviour of CRAs would create the opportunity for regulators potentially to exert political influence over ratings. For example, if a CRA determines that ratings of a bank should be downgraded, thereby potentially causing harm to investors in shares of that bank, the relevant Member State could have a basis to impose sanctions on the CRA – this might prevent the CRA from taking needed action. An even more obvious example would be when a CRA downgrades the rating of a Member State; that Member State could seek to impose sanctions on the basis that such a downgrade impaired the "proper functioning of its markets". Either situation would be contrary to Section 2.1 of the IOSCO Fundamentals, which provides the following: "A CRA should not forbear or refrain from taking a rating action based on the potential effect (economic, political, or otherwise) of the action on the CRA, an issuer, an investor, or other market participant."

Finally, to ensure independence of the CRAs, we believe it is important, for the sake of clarity, that a statement is included to the effect that the Proposal does not create any third party rights as against the CRAs. The Commission should be very clearly aware of the chilling effect that the creation of additional and inappropriate legal liability, or inappropriate standards, will have upon the quality and independence of credit ratings. It is clear that, as with any independent opinion, at times some of our opinions will be unpopular. They may, as noted above, contribute to changes in financial conditions for companies, banks and governments. As such, the ability of a rated issuer to threaten a CRA with vexatious legal action poses a clear and direct threat to the independence and timeliness of rating actions. We believe that it would be disproportionate to require additional legislation, or the amendment of existing legislation, to specifically target the provision of independent credit opinions. Moreover, the common law/civil code of each Member State already establish negligence standards with respect to the provision of services; these standards could be applied in the case of a genuine grievance against a CRA.

3. Corporate Governance

Any corporate governance measures must be proportionate and practical.

Articles 8(4) and 8(5), read together with Article 7(2), would require each CRA, regardless of its size or corporate form, to employ a group of non-executive directors, with specified experience (verified by the relevant competent authorities) and for a set period of time only, to oversee the CRA's methodologies, models, policies and procedures, and internal quality control system.

This appears to amount to a requirement to abnegate to third parties ultimate responsibility for the tools used to develop and assign our ratings. We are not aware of any similar requirement under any other EU legislation with respect to the financial services sector. We believe this unprecedented requirement is not only overly intrusive into the way in which CRAs run their businesses, but counterproductive in that it pushes ultimate responsibility away from the CRA and onto a small group of non-executive directors.

Moreover, from a corporate governance perspective we think it is ill advised to require that a central part of a CRA's business – the decision-making about the methodologies, policies and procedures critical to the reputation of the CRA for reliable ratings – be handed over to approved "experts" with no long-term stake in the reputation of the CRA. There would be no guarantee that these "experts" will not try to implement idiosyncratic ideas and polices that damage the CRA's reputation for reliable ratings. The CRA would be defenceless in this situation. We also have a concern that there will not be a sufficient number of such "experts" willing to work for a fixed term and that too many of them will have to be drawn from the ranks of "experts" whose background is with issuers and institutions that benefit from higher ratings.

We agree that it is imperative for each CRA to have internal processes to review its methodologies and models and their continued appropriateness. We also firmly believe that each CRA must monitor, on a regular and systematic basis, compliance with its own policies and procedures. We further recognize that these monitoring functions should be subject to regulatory oversight to ensure the monitoring is robust. We believe a robust compliance program subject to regulatory oversight is amply sufficient to ensure the integrity and appropriateness of a CRA's ratings and is entirely consistent with the regulatory approach for all other financial services companies.

4. Other Practical Issues

The oversight regime should focus on globally accepted best practices and avoid prescriptive measures which are either unworkable or actively damage the ability of existing and future CRAs to respond to the evolution of the financial markets.

We have practical concerns with the following provisions (and corresponding recitals) of the Proposal:

- Recitals. The Recitals should be modified, as necessary, to track the changes to the Articles specified in this letter. Additionally, we noted discrepancies between what is provided for in the Articles and what is set out in the Recitals. For example, Recital 12 refers to the ability of CRAs to rely on representations from a transaction party, provided such party can demonstrate that it has the financial strength to cover the liabilities that might arise under its representations. This restriction is not included in the Articles, nor should it. Other examples include the following: Recital 16 requires a CRA to include information on defaults with respect to withdrawn ratings on securities, for up to four years after the relevant rating has been withdrawn; this requirement is (rightly) not in the

Articles, since it will be virtually impossible for a CRA to have access to the necessary information with respect to a security after the CRA has withdrawn its rating. The Recital refers to the CRA being able, through contract, to force disclosure from the issuer; CRAs do not have such power. Recital 18 seems to be different from Article 15(2), in that the Recital refers to a "central repository" and the Article does not (and see our comments below with respect to the Article). To avoid uncertainty and confusion, the Recitals should be consistent with the Articles. Finally, to the extent the Recitals cover topics addressed by the IOSCO Fundamentals, the Recitals should track the language of the relevant provision of the IOSCO Fundamentals. For example, Recital 13 should track Section 3.10 (IOSCO).

- Article 2(1). The definition of "credit rating agency" should be amended to exclude divisions or units within a CRA that do not produce ratings and are appropriately segregated from the CRA's rating business, in accordance with Section 2.5 of the IOSCO Fundamentals. Otherwise, the Proposal will discriminate against different CRA business models that have been chosen for legitimate business purposes. The definition of "related third party", given its inclusion of the category "any other party that may interact with a credit rating agency on behalf of or for the account of a rated entity", is also too broad and vague to be practical. For example, this could pick up rating advisors or lawyers that work with rated entities and interact with CRAs. We do not believe this was the intention of the Commission, nor should it be.

- Article 8(4). The second sentence of this Article should be amended to track the language in Section 1.7-2 of the IOSCO Fundamentals: "Where feasible and appropriate for the size and scope of its credit rating services, this function should be independent of the business lines that are principally responsible for rating various classes of issuers and obligations".

- Article 9(3)(a). As drafted, this Article is unworkable. What would happen to existing ratings in the event we were to reach the 5% threshold? Must we immediately withdraw the ratings, or only such ratings, selected on an unspecified basis, as would return the coverage to a 5% level? That could potentially be extremely disruptive to the market. Furthermore, this provision is anticompetitive, in that it would be very difficult for small or start-up CRAs to comply. When IOSCO looked at this issue, they recognised these (and other) problems, and opted for a disclosure requirement instead. We would therefore suggest that this Article be amended to track the language of Section 2.8(b) of the IOSCO Fundamentals.

- Article 9.3(b). This Article appears to contradict the provisions of Annex A(II)(A)(1), which explicitly allows for holdings in diversified collective investment schemes. The Annex is consistent with Section 2.13(a) and (b) of the IOSCO Fundamentals. This Article should be amended to allow specifically for holdings in diversified collective investment schemes.

- Article 10(4). The rotation scheme set forth in this Article, as drafted, could seriously undermine the ability of CRAs to issue appropriate ratings. CRAs have been admonished by CESR and IOSCO, among others, to make sure that ratings are determined by analysts with sufficient levels of experience. However, if we were to follow the provisions of this Article, the average experience on any rating committee would be 2 ½ years. We accept that CRAs should be attentive to the relationships that might develop between an analyst and any entities that he or she deals with on a regular basis. To that end, we would be amenable to a requirement that each CRA must adopt a reasonable rotation policy established by the CRA.

- Article 12(1). We would suggest the following changes to clarify the intent of this provision and to ensure that there is no inadvertent regulation of the content of ratings; these changes would also track the relevant IOSCO Fundamentals Sections (1.2 and 1.4). In the first paragraph, we would suggest that the first sentence be amended to read as follows: "A credit rating agency should use rating methodologies that are rigorous, systematic, and, where possible, result in ratings that can be subjected to some form of objective validation based on historical experience"; these changes will avoid the implication that there must be historical data available from the beginning. In the third paragraph, we would propose that the first sentence be amended to read as follows: ". . . are based on an analysis of all information known, and believed to be relevant, to the credit rating agency, consistent with its published rating methodologies."

- Article 12(4). It is our experience that a reasonable number of methodologies (for example, the rating of sovereign debt, the use of national rating scales and the notching process between parents and subsidiaries) do not require a comprehensive review on an annual basis. Others (for example, interest rate stresses or criteria for new or evolving forms of structured finance) require much more frequent review. A prescribed annual review requirement for all methodologies, irrespective of need or rating performance, would encourage a standard "one-size-fits-all" depth of review that was at once too shallow to adequately serve new criteria development, or criteria where performance indicated change was urgently needed, and at the same time would absorb resources in repetitive reviews of uncontroversial criteria which were producing stable rating performance. We believe the IOSCO Fundamentals address the issue of methodology/criteria review in a reasonable and adequate way, and would therefore propose replacing Article 12(4) with Section 1.7-2 of the IOSCO Fundamentals.

- Article 12(5). We agree that we should inform the marketplace promptly of any material changes to our methodologies, models and key rating assumptions. This is consistent with Section 3.10 of the IOSCO Fundamentals: ". . . the CRA should fully and publicly disclose any material modification to its methodologies and significant practices, procedures and processes. Where feasible and appropriate, disclosure of such material modifications should be made prior to their going into effect. A CRA should carefully consider the various uses of credit ratings before modifying its methodologies, practices, procedures and processes." It is not practical, however, to notify every change, as the

Proposal seems to imply. More importantly, a requirement that all ratings be placed on (in Fitch's terminology) Rating Watch would demonstrably not serve the marketplace. If a methodology change were likely to affect only 5% of issuers with single-notch movements, the market would struggle to understand the placing of many hundreds of securities on Rating Watch. Equally, the discrete signal supplied by Rating Watch for individual securities would be entirely suppressed during this period. It is also not practical to have a fixed time by which a Rating Watch must be resolved, given that the facts and circumstances are different in each case, and often the relevant determining factors are not within our control; we do endeavour to resolve Rating Watches as quickly as we can. A fixed time horizon would also act as a significant deterrent to CRAs from undertaking major alterations to methodology, ultimately at the price of the very responsiveness the Proposal seeks to foster. This Article should therefore be modified to track Section 3.10 of the IOSCO Fundamentals.

- Article 14(1). The reference to "any" credit rating could be interpreted to include private ratings, which we assume is not the intention of the Commission. We would therefore suggest that private ratings be explicitly excluded.

- Article 14(3). We do not believe that a different symbol for structured finance ratings makes sense. More importantly, based on feedback we (and other CRAs) 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 might, instead, 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. Accordingly, Section 3.5(b) of the IOSCO Fundamentals should replace this Article.

- Article 15(2). First, the use of the word "all" could be interpreted to include private ratings; we would suggest that private ratings be explicitly excluded. Second, we assume that making our current ratings and default and transition studies available on our free, public website would fulfil the requirements of this Article; we would welcome clarification on this point. To the extent the Commission intends, instead, to require that ratings histories be available for free and/or that the required data be placed in a common repository, we would strongly object. With respect to the first point, the Commission must understand that many CRAs (Fitch included) seek to commercialize some or all of this data. The Commission, therefore, should amend this provision to specify that the required information need only be disclosed after a certain time lag, which is consistent with the approach proposed by the U.S. SEC. We strongly believe that the time lag should be no shorter than six months. With respect to the second point, we would point out that it is very important to us that we maintain a minimum level of control over our data, and we cannot ensure that control if a third party hosts our data. We do not believe this should result in any kind of impediment to access. To ensure adequate access, the Proposal 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 CRA's website and an agreement to be subject to the standard terms of usage).

- Article 17. This Article would require a CRA to keep "adequate records . . . of all its activities undertaken, including records of all significant elements of the dialogue with the rated entity and its related third parties." We believe this language is not very clear, and think it should be replaced with the following: "records used to form the basis of a rating issued by a CRA, including external and internal communications received and sent by the CRA and its employees."

- Article 21(1). Prior to the imposition of any sanction on a CRA, there should be an appropriate process during which the CRA may dispute any allegations against it.

- Annex I. We believe that items 8 and 9 are too vague. This Annex should specify precisely what employee and compensation information is required and the recipient should be obligated to keep the information provided confidential. We also do not understand the reference in item 11 to a "programme of operations." Perhaps this is only relevant for CRAs that are starting up operations in the EU; in any event, we would appreciate more clarity.

- Annex II, Section A(3). The second bullet should be amended to allow us to share information to the extent we are required to by law/court/subpoena/regulator and to allow the appropriate dissemination of information to the press.

- Annex II, Section A(7). The proposed restriction would make it very difficult for us to compete with other companies for talented people. Individuals would prefer to work for an employer that would not restrict their ability to advance their careers as they see fit. Moreover, we do not have the power to control with whom our former employees work. If the intention is that we would be required to pay for one year's gardening leave for every employee, the costs of this proposal would be unduly burdensome for the CRAs.

- Annex II, Section B(I)(2)(b). This provision should be modified to track the language in Section 3.3 of the IOSCO Fundamentals.

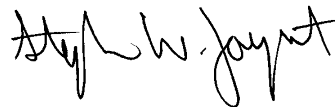
- Annex II, Section B(I)(2)(c). This provision requires the disclosure of "any" appropriate risk warning. The use of the word "any" should be modified by reference to any warning that the CRA believes to be appropriate with respect to its rating.

- Annex II, Section B(I)(3). Again, the use of the word "any" to describe the attributes and limitations of the credit rating that must be disclosed should be qualified to refer to any attributes and limitations that the CRA deems to be material to its rating.

- Annex II, Section C(II)(1). This provision sets forth a concept that was considered by IOSCO and rejected in favour of a different type of disclosure; we suggest that this section be amended to track the language in Section 2.8(c) of the IOSCO Fundamentals.

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 +1 212-908-0530 with any questions that you might have on this response. You also should feel free to call Charlie Brown, our General Counsel (+1 212-908-0626), Richard Hunter, Managing Director – Credit Policy (+44 20 7417 4362) or Susan Launi, Senior European Counsel (+44 20 7682 7470), my colleagues who helped me prepare this response.

Very truly yours,



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