



November 5, 2018

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Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Cc: Katherine Hsu, Chief, Office of Structured Finance

**Re:               Comments to Proposed Amendments to Codify Exemption  
                     to Credit Rating Agency Rule**

Ladies and Gentlemen:

On behalf of the global memberships of the Structured Finance Industry Group (“SFIG”)<sup>1</sup> and the Australian Securitisation Forum (“AuSF”)<sup>2</sup>, we support the Securities and Exchange Commission’s (the “Commission”) proposed permanent exemption from Release No. 34-61050 (“Rule 17g-5”) with respect to Nationally Recognized Statistical Rating Organizations (“NRSROs”) under the Securities Exchange Act of 1934.

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<sup>1</sup> SFIG is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization markets. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. Further information can be found at [www.sfindustry.org](http://www.sfindustry.org).

<sup>2</sup> The AuSF was formed in 1989 to promote the development of securitization in Australia. As the peak industry body representing the Australian securitization market, the AuSF performs a pivotal role in the education of government, regulators, the public, investors and others who have an interest or potential interest both in Australia and overseas, regarding the benefits of securitization in Australia and aspects of the Australian securitization industry.

Rule 17g-5 applies U.S.-based securities regulations to asset-backed securities (“ABS”) transactions entirely bought and sold overseas with only the Commission’s regulation of NRSROs as the jurisdictional nexus. Imposition of Rule 17g-5 on transactions offered by foreign issuers solely to foreign investors would have an undue negative impact on global issuance of ABS and exact extensive costs on securitization issuers and NRSROs around the globe without tangible benefits to, or protection of, U.S. investors.

## **I. Existing Rule 17g-5 has Proven to be Ineffective in the United States**

From the industry’s perspective there has been, to date, no material progress in the U.S. towards achieving the stated goals of the Commission since the June 2, 2010 compliance date of Rule 17g-5. Longstanding discussions among our issuer member firms have produced credible and specific evidence that very few non-hired NRSROs have requested access to the websites that arrangers are required to maintain under the Rule.

Although it has been largely ineffective to date, we do support, in the context of the U.S. market, the Commission’s goals as stated in the Rule 17g-5 Adopting Release;<sup>4</sup> i.e., to promote increased competition among NRSROs through issuance of unsolicited ratings, to address conflicts of interest in credit ratings and, ultimately, to improve ratings quality. However, as discussed in the next section, we do not believe that requiring extraterritorial application of Rule 17g-5 is consistent with federal securities laws in the U.S., which focus on the regulation of offerings to U.S. entities.

## **II. Rule 17g-5 Raises Substantial Jurisdictional Concerns**

Concerns with respect to the effectiveness of Rule 17g-5 are compounded by lingering international uncertainty regarding its potential future applicability to extraterritorial transactions. Our members believe that the Rule should not apply to the conduct of NRSROs or arrangers with respect to non-U.S. offerings, absent a substantial effect in the U.S. or on U.S. persons. We believe that defining the scope of the Rule in this way would advance the Commission’s objectives, provide sufficient certainty for market participants and regulators in other jurisdictions, and avoid certain unintended consequences that might otherwise arise in the context of rated deals involving non-U.S. arrangers selling to non-U.S. investors.

In common with the laws of other Organisation for Economic Cooperation and Development (“OECD”) jurisdictions, the federal securities laws of the U.S. focus on the regulation of offerings to U.S. persons or with substantial impact on the U.S. This guiding principle of local investor protection is reflected in the preamble to, and the findings set out at the start of, the U.S. Credit Rating Reform Act of 2006 and in the general mandate of the Commission itself. This principle suggests the Commission has a limited interest in regulating securities offered solely outside the U.S. and this is evidenced by certain existing provisions

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<sup>4</sup> See Rule 17g-5 Adopting Release at 63844.

and practices, including the Regulation S safe harbor. Given this background, the application of Rule 17g-5 to all credit ratings provided by an NRSRO or a registered affiliate, regardless of whether the relevant transaction involves a U.S. investor connection (i.e., via a U.S. issuer or a U.S. offering), would be inconsistent from a policy perspective with the wider U.S. legislative and regulatory framework as well as principles of international comity.

Additionally, with respect to Rule 17g-5, while each NRSRO defines the parts of its business that operate under the NRSRO designation (and, in theory, can therefore control the scope of its conduct that is subject to the Rule), arrangers have no role in the NRSRO-designation process but incur significant burdens by operation of Rule 17g-5 simply because they engage the NRSRO to assign an initial credit rating. Because the Rule operates to regulate the conduct of both NRSROs and arrangers, under general principles of fairness, the Rule should not apply to conduct outside the U.S. by non-U.S. issuers absent a substantial effect in the U.S. or on U.S. persons.

### **Conclusion**

We support the Commission's proposed rule to make permanent its exemption for NRSROs outside the U.S. from the requirements of the Rule absent a substantial effect in the U.S. or on U.S. persons. Since the financial crisis, most securitization markets worldwide have recovered. However, these markets would benefit greatly from the removal of remaining uncertainties and impediments so that securitization might continue to provide a beneficial role in financing international economies in the future. Please do not hesitate to contact Sairah Burki, SFIG Senior Director and Head of ABS Policy, at 202.524.6302 or at [sairah.burki@sfindustry.org](mailto:sairah.burki@sfindustry.org) or Chris Dalton, AuSF CEO, at +61.2.8243.3906 or at [cdalton@securitisation.com.au](mailto:cdalton@securitisation.com.au) with any questions.

Sincerely,

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