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**"TURMOIL IN THE U.S. CREDIT MARKETS:
THE ROLE OF THE CREDIT RATING AGENCIES"**

Chairman Dodd, Ranking Member Shelby, and Fellow Senators:

I am please and honored to be invited to testify here today and will get to the point without delay.

I. What We Have Long Known About Ratings Agencies

For some time, we have known that the credit rating agencies were different than the other "gatekeepers" on whom investors necessarily rely for certification and verification services (e.g., auditors, investment banks, attorneys and securities analysts). The most obvious differences include:[1]

(1) An Oligopolistic Market. Until very recently, the reality was that only three credit rating agencies were recognized by the SEC as "NRSROs" ("Nationally Recognized Statistical Ratings Organizations"). Moreover, because the long-standing convention has been that an issuer must obtain two ratings on its debt securities, competition was even weaker than this number would indicate. In turn, weak competition implied that the credit rating agencies needed to worry less about preserving their "reputational capital" than in other markets where involvement in a major scandal could stigmatize or destroy a firm.

(2) Immunity From Liability. Other gatekeepers – accountants, law firms, and investment banks – are regularly sued by investors, but credit rating agencies have been singularly immune from liability to investors. This is partly the consequence of their "First Amendment" defense under which they assert that they are simply the publishers of financial information and partly the result of the high pleading standards imposed by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which requires that a

[1] For a fuller elaboration of these points, see John C. Coffee, Jr., GATEKEEPERS: The Professions and Corporate Governance (Oxford University Press 2006).

plaintiff plead facts with particularity giving rise to a strong inference of fraud before it can obtain discovery. Put simply, if credit rating agencies do not have to fear liability to investors, they have less incentive to be diligent or prudent.

(3) “Regulatory Licenses”. Unlike other gatekeepers, credit rating agencies do not simply provide information or verifications; rather, their investment grade rating is a necessary condition before many institutional investors can buy debt securities. Thus, even if their views were not respected or their ratings were known to be inflated, they would still be retained to grant “regulatory licenses.”

(4) The Built-In Conflict of the “Issuer Pays” Model. Beginning in the 1970s, credit rating agencies shifted their business model from a subscription-funded business and began to receive the vast majority of their fees from issuers. Professor Frank Partnoy estimates that approximately 90% of the revenues of rating agencies come from issuers paying for ratings.[2] This means that the agencies are a watchdog paid by the persons they are to watch. In contrast, securities analysts are not compensated in this fashion; indeed, since the Sarbanes-Oxley era reforms, securities analysts are walled off within investment banking firms from underwriting personnel who might wish to pressure them to support the firm’s clients. Although accountants are also paid by the clients that they audit, accounting firms face potentially bankrupting liabilities if they acquiesce in their clients’ demands for favorable treatment. No one else is in the position of the rating agency with a built-in conflict and no real exposure to liability.

The inherent conflict facing the credit rating agency has been aggravated by their recent marketing of advisory and consulting services to their clients. Today, the rating

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[2] See Frank Partnoy, “How and Why Credit Rating Agencies Are Not Like Other Gatekeepers” (http://ssrn.com/abstract=900257) (May 2006).

agencies receives one fee to consult with a client, explain its model, and indicate the likely outcome of the rating process; then, it receives a second fee to actually deliver the rating (if the client wishes to go forward once it has learned the likely outcome). The result is that the client can decide not to seek the rating if it learns that it would be less favorable than it desires; the result is a loss of transparency to the market.

(5) Weak Incentives to Provide Current Information or Update. Ratings agencies are paid to issue a rating and to consult with the issuer about the impact of possible transactions. They are not paid to update that rating. Hence, downgrades tend to be infrequent (because they antagonize the client while they earn no income for the agency). As a result, ratings are often stale, meaning that investors are relying on out of date ratings that the agency might not issue today, either because of changed facts or changed methodologies.

II. What Have We Recently Learned About Ratings Agencies

The recent credit crisis, beginning with the subprime mortgage market and now extending well beyond, has taught us some new truths about the credit rating agencies, including:

1. Although Credit Rating Agencies Are Good at Judging the Firm-Specific Risk Associated With Individual Companies, They Have Proven Relatively Poor At Estimating the Risk Associated With Structured Finance Products. For roughly a century, credit rating agencies have demonstrated their ability to accurately predict defaults on corporate bonds. But corporate bond ratings are based largely on publicly available data (such as audited financial statements). The process is very different in the case of structured finance products. The data used in such cases comes principally from the

issuer or underwriter and is not independently verified by the rating agency or anyone else.

The analytical process is also very different. The rating agency evaluating collateralized debt obligations (or "CDOs") must employ quantitative models that seek to assess the likely cash flows from portfolios of correlated assets. In hindsight, it is now evident that the models used by the ratings agencies to estimate the risk of loss on structured finance products (especially CDOs) were flawed and inaccurate. Possibly, their greatest deficiency was their blindness to the "default dependence" among the similar assets in the portfolio. The possibility of "default contagion" in real estate markets – namely the prospect that a default by one or more borrowers would increases the likelihood that other borrowers would also default – was either missed or egregiously underestimated.

Besides overlooking "contagion risk," the ratings agencies erred in at least two other important ways. First, the investment grade status given to senior tranches of CDOs was largely based on the subordination of junior tranches to that senior tranche. If cash flows were less than expected, junior tranches were to bear the loss and senior tranches were to receive full payment. But the rating agencies appear to have seriously underestimated how much of the portfolio had to be placed in the junior tranche and subordinated in order to adequately secure the senior tranche. Secondly, the rating agencies relied much too confidently on credit enhancement provided by monoline insurers who wrote credit default swaps to "insure" investors against default. Both the size of the obligations underwritten by these monolines and their own heavy investment in structured finance products have today made them effectively insolvent. Nonetheless, the rating agencies blithely ignored this problem without downgrading the monolines until long after their predicament was headline news.

In principle, debt securities that are given the same rating (for example, "AAA") should have the same default risk. But the recent disparity between Moody's default rates on corporate bonds and CDOs is extraordinary. Looking at the default rate on Moody's lowest investment grade rating ("Baa"), two financial economists have reported that the five year cumulative default rate on corporate bonds receiving a "Baa" rating from Moody's between 1983 and 2005 was only 2.2%, but the same five year cumulative rate between 1994 and 2005 on CDOs with a Baa rating was 24% – a more than ten to one disparity![3]

All this leads up to the critical question: Were the inflated ratings given by the ratings agencies to structured finance products simply an innocent mistake, attributable to the meteoric rise of structured finance and the agencies' reliance on unproven quantitative models that had not been thoroughly tested? Or, was it the product of conflicts of interest, as the agencies blinked at developments and warnings that should have alerted them to danger because structured finance have proven miraculously profitable for them causing their own profits and stock prices to soar in the period after 2000? In a provocative recent article, The Wall Street Journal recently suggested that Moody's desire to become a larger player in the structured finance field (where it had been a late entrant) led it to be more generous in its ratings and to defer to managements and promoters.[4] That same article noted that Moody's earnings rose 375% over the last

[3] See Charles Calomiris and Joseph Mason, "Reclaim Power from the Rating Agencies," Financial Times, August 24, 2007 at 11.
[4] See Aaron Lucchetti, "Rating's Game: As Housing Boomed, Moody's Opened Up," The Wall Street Journal, April 11, 2001 at p. A-1.

six years, fueled largely by structured finance's rise, and Professor Frank Partnoy has similarly pointed out that Moody's net income rose from $159 million in 2000 to $425 million in 2004, while its stock price increased by 300% between 2001 and 2006 – again, as a direct result of the rise of structured finance.[5] Today, structured finance is believed to account for 43% of Moody's revenues, whereas a few years ago its contribution fell in the single digit range. At the least, the motive for grade inflation seems clear and present.

Equally important, the rise of structured finance seriously aggravated the existing conflict of interest problem. No individual corporate issuer accounts for a significant share of the revenues of any ratings agency (Standard & Poors estimated in 2003 that no one issuer or corporate group accounted for 2% of its revenues). But in the case of structured finance the key player is the investment bank, and it may have packaged together a different CDO offering on a nearly monthly basis during 2005 and 2006. Because only a limited number of investment banks did such deals, they thus held economic leverage over the rating agencies that individual corporate issuers did not have.

Ultimately, it is still premature to estimate the impact of conflict of interest on ratings inflation. But it played a role and thus precautionary reforms are appropriate if they do not impose high costs.

2. <u>Rating Agencies Were Tardy At Adjusting Their Models to New Developments and At Revising Ratings In Accordance With Their Revised Models</u>. Let me briefly review the major economic developments in the housing industry over the last few years.[6] Prior to 2005, subprime mortgage loans represented roughly 10% of outstanding mortgage loans. By 2006, the origination of subprime mortgages rose to account for 20%

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[5] See Partnoy, supra note 2.
[6] This discussion relies on Michael Crouhy and Stuart M. Turnbull, "The Subprime Crisis of 07," (http://ssrn.com/abstract=1112467) (March 2008).

of new residential mortgages (compared to an historical average of 8%). Traditionally, lenders required the mortgage borrower to make at least an 80% downpayment on the purchase price of the home. Beginning around 2005, subprime borrowers were offered "80/20" mortgage loans – consisting of an 80% first mortgage and a 20% second mortgage – to finance 100% of the home. Many of these mortgages also had a "short reset" provision which provided for a below market initial interest rate that would later be reset to a typically higher market rate. In effect, the initial interest rate was a marketing teaser. Add to this picture the factors that short-term interest rates began to rise from mid-2004 on (from near record low levels) and that housing prices had either stalled or already begun to sink, and the stage was set for disaster as adjustable rate mortgages began to reset upward.

More generally, spurred by the worldwide insatiable demand of institution investors for investment grade rated structured finance products, underwriting standards on mortgage loans began to deteriorate. The loosening of mortgage loan standards was first noted by the Office of the Comptroller of the Currency in its 2005 "Survey of Credit Underwriting Practices." Not only were lenders requiring little or no equity investment, but to increase "affordability," they came to require less and less documentation of income. Such undocumented loans – known popularly as "liar loans" – rose to account for 40 percent of subprime mortgage loans in 2006, up from 25 percent in 2001. By early 2007, journalists had begun to give prominent attention to these problems. See P. Coy, "Why Subprime Lenders Are in Trouble," Business Week, March 2, 2007.

Obviously, for a borrower having no equity stake in his or her home (as a result of 100% financing) and facing rising interest rates and declining housing prices, default becomes rational. This is especially the case in state jurisdictions which bar any deficiency judgment – so that foreclosure and loss of the home is the only penalty for default. Indeed, once housing prices begin to fall, it becomes increasingly hard to justify paying back a mortgage at an increasing interest rate to own a home with a current market value lower than the total non-recourse mortgage debt.

None of these obvious facts were lost on the ratings agencies, which began to issue warnings about the deteriorating state of the subprime market in mid-2006. By the end of 2006, Moody's publicly announced that the documentation problems on subprime mortgages was becoming more serious.

But major downgrades did not come until July 2007, when S&P downgraded some $7.3 billion of CDO securities sold in 2005 and 2006. Shortly thereafter, Moody's downgraded some 691 issues from 2006, with an original value of $19.4 billion, including some 78 bonds which Moody's had originally rate Aaa. In October 2007, S&P lowered its ratings on RMBS securities with a par value of $22 billion. In November 2007, Moody's downgraded 16 SIV issuers with approximately $33 billion in debt and followed that with further downgrades on another $14 billion in December (at which time it also placed under $105 billion under credit review).

In short, these downgrades came more than a year after the Comptroller of the Currency first publicly called attention to the deteriorating conditions in the subprime market and many months after the agencies themselves first noted problems in the market. And they came in a series of massive waves, further suggesting that individual ratings were not being reviewed on a case-by-case basis.

3. Because Due Diligence Was Not Performed on Structured Finance Products, Ratings Were Awarded Based on Biased or At Least Selectively Disclosed Information. As representatives of both Moody's and S&P testified before this Committee in September, 2007, the credit rating agencies do not perform due diligence; that is, they accept the representations and data provided by issuers, loan originators, and underwriters at face value and without undertaking any real effort to verify. Although this absence of verification also applies to corporate bonds, the two contexts are dramatically different. In the case of corporate bonds, the issuer has released audited financial statements, is usually a "reporting" company making regular, periodic filings with the SEC, and typically has other securities traded in deep and efficient public markets (with the result that the prices on those traded securities supply useful information). But in the case of structured finance products, there is only a pool of financial assets, and the quality of the collateral underlying it may range considerably. To be sure, ratings agencies do request and receive information, but they do not audit, verify or even sample it. Put simply, this is the equivalent of an auditor accepting an issuer's statements about its revenues, costs, inventories and contingent liabilities at face value.

Absent some efforts at verification, it is doubtful that the ratings on structured finance will ever again be credible to much of the debt market. In the past, underwriters did make efforts to perform some due diligence (in part because of their strict statutory liability under §11 of the Securities Act of 1933, which holds them liable for a misstatement or omission unless they could show that they had conducted a "reasonable investigation"). Typically, underwriters hired "due diligence" firms (of which Clayton Holdings, Inc. is probably the largest). Such firms did sample the collateral in the portfolio, reviewing a percentage they considered adequate of the total mortgage loans in the CDO. But recent press reports have suggested that an investigation by New York State Attorney General Cuomo has found that even when the "due diligence" firm warned the underwriter that a substantial percentage of the loans in a portfolio were "exception loans" – that is, loans outside the investment bank's normal underwriter criteria –, the underwriter did nothing.

Why did the underwriter not respond? Perhaps, the demand of the market for more and more CDO offerings was too attractive for it to resist. Perhaps, short-term focused investment bankers, concerned more about their annual bonuses, did not worry about litigation years away (and litigation over debt offerings had been rare). Perhaps, the investment bank just assumed that real estate values would continue to rise so that foreclosures would not truly injure the collateral. Perhaps finally, the investment banker assumed that its lawyers could solve any disclosure problem that arose with boilerplate warnings in the prospectus or offering memorandum. Whatever the reason, critical information did not reach either the market or the rating agencies even when it was gathered.

Summary: More problems could be discussed, but the basic picture that emerges is one in which (1) the rating agencies were using largely untested quantitative models that were very different from the judgment-based methodologies that they used to assess default risk at individual issuers, (2) the rating agencies were tardy in their response to new information of which they were aware; and (3) they relied on untested, unverified factual information submitted by loan originators who knew how to influence the agencies' models and had considerable incentive to do so by withholding adverse information.

III. What Should Be Done?: An Agenda for Rating Agency Reform

Reform efforts should have three distinct goals: (1) to increase the reliability of ratings on structured finance products; (2) to promote competition within a highly concentrated, indeed oligopolistic market; and (3) to enhance market transparency. These goals, of course, overlap. For example, reducing or better managing conflicts of interest might help realize all three.

A. Improving Reliability. Of all the problems associated with rating inflation on structured finance products, the most serious may be the unverified nature of the information relied upon. Only those who believe in Santa Claus can fail to recognize that the information provided by loan originators is likely to be biased. For a variety of reasons, loan originators face only a very low risk that a class action can be certified against them; hence, they are underdeterred and may even believe (possibly correctly) that the underwriter does not want to learn about the problematic quality of the collateral.

Conceivably, rating agencies could be required to conduct due diligence. At present, however, they lack the staff to do so. Rating agencies rate an extraordinary number of products. Even before structure finance grew meteorically to its present size, Moody's was rating over 21,000 issuers a decade ago in 1997. The staff required to verify basic financial information on those securities would be sizable.

What then is feasible? Mandatory verification (at least through a sampling approach) can be achieved by other means. Specialized due diligence firms (such as Clayton Holdings) exist and could provide the same information to the rating agency that they currently provide to the underwriter. The premise here is that it is more likely that the rating agency will respond to negative information than that the underwriter will. To make this proposal more specific, consider a hypothetical rule that required loan originators and underwriters to provide the rating agency with any information that was given them by a third party firm. To make such a rule even more mandatory, one might also require that no investment grade ratings would be given on a structured finance product by an NRSRO rating agency unless it had received a report from an independent third party – i.e., one not controlled by the loan originator or underwriter – that addressed the quality of the loan collateral and set forth its conclusions based on a sampling of the collateral that it deemed reasonably sufficient for purposes of its conclusions. The exact contents of such a certification need not be set forth in this testimony. For example, it might assure the rating agency that not more than 10% of the credit scores for the borrower in the mortgage pool fell outside specified levels or that not more than 10% of the borrowers in the pool appeared to have a minimum equity investment of less than 20% in their homes.

The real purpose and point of this proposal is to supplement the quantitative model of the rating agency with some minimal auditing (or at least sampling) that tests the quality of the information that the rating agency is relying upon. Otherwise, the oldest rule about quantitative models is "GIGO" – garbage in, garbage out. In effect, this proposal seeks to invent a new gatekeeper to complement the role of the rating agency because, in the world of structured finance, the rating agency is flying blind. Worse yet, because rating agencies commonly provide issuers and underwriters with their quantitative models, the latter know precisely how to “game the model” with only slightly misleading information to produce the desired result.

Several criticisms of this proposal can be anticipated. First, if the proposed rule only required the underwriter to give the rating agency any advice or reports that it received as to the nature or quality of the loan collateral, this might chill the underwriter’s incentive to commission such reports. One response here might be to use disclosure to embarrass the underwriter by requiring both it and the rating agency to disclose prominently the absence of such reports or information and any reasons therefor. But the better answer is to mandate that the NRSRO issue not give an investment grade rating when it is in effect “flying blind” in the absence of some independent sampling of the collateral.

A possible objection to such a mandatory rule is that it would be unconstitutional as an interference with the financial publisher’s First Amendment rights. Certainly, the Government could not tell The Wall Street Journal what it must do before it recommended a particular security to its readers. But if the Government cannot regulate the speech of alleged “financial publishers” (i.e., the term that the ratings agencies like to use for themselves), it can regulate the behavior of NRSROs. Thus, the rule would not prohibit speech but would instead condition the ratings agency’s continued status as an NRSRO on its compliance with a rule requiring it to receive some certification as to quality of the collateral before giving an “investment grade” rating. Ultimately, this is little different than the SEC’s longstanding rule (which dates back to 1933) requiring an issuer that sells securities to the public to provide audited financial information. In both contexts, some certification by independent professionals should be necessary. Some rating agencies might abandon their NRSRO statuses, but that is not necessarily undesirable.

Mandatory certification by a "due diligence" expert would not necessarily be resisted by the industry. Although it does have a cost, underwriters already use such experts. The investment banking industry understands that use of such an expert reduces its own liability. The "due diligence" expert may face §11 liability in the case of registered public offerings (but so does the auditor), and the investigation to be required of such an expert would fall far short of an audit and more closely resemble the auditor's traditional "cold comfort" letter.

Other proposals to increase the reliability of ratings can also be imagined that do not involve great cost or high liability. In prior testimony before this committee, I suggested that the NRSRO status should be forfeited (at least for a defined period and at least for a class of products) if the default rate experienced by the rating agency exceeded some specified level. Because the major rating agencies face little liability to investors and are not yet subject to significant competition from new entrants, a high rate of error has lower costs to them than it does for other professionals. Some sanction is needed. NRSRO forfeiture would not prevent the rating agency from issuing ratings, but it would deny them the NRSRO designation that converts their rating into a "regulatory license" that enables many classes of investors to buy the security.

B. Improving Transparency. Two critical problems stand out: (1) Staleness and (2) Forum Shopping. More generally, fee disclosure needs to be enhanced.

1. Staleness. From a transparency perspective, the gravest problem today may be the staleness of debt ratings. As noted earlier, issuer-paid rating agencies earn no

revenues from downgrades and may jeopardize their relationships with both issuers, investment banks, and many institutional investors (who must today typically write down the value of downgraded debt). As a result, downgrades occur infrequently and generally on the brink of disaster (such as the now legendary downgrading of Enron four days before its bankruptcy filing).

Moreover, even when a ratings agency changes its model or its approach to rating a class of products, it may not revise outstanding ratings on previously issued securities, (even though it would clearly award a lower rating today to the same securities if they were currently being rated). The result is "stale" ratings that mislead investors.

The best answer to this problem is to impose a requirement for periodic review and re-affirmation of a rating by the rating agency. If the rating agency did not wish to re-affirm its prior rating, it could withdraw its rating, but it should not be permitted to maintain a stale rating that misleads investors.

Not only should there be a requirement of periodic review (probably annually), but there should be an obligation to review all ratings promptly whenever the rating agency's basic model or methodology is materially changed. For example, if the rating agency were hypothetically to decide to revise its model to give greater weight to the geographic concentration of the mortgages in the pool, it should be required to downgrade (or at least withdraw) all ratings that were inconsistent with its revised model within some reasonable period (say, 90 days).

Periodically updating one's ratings or evaluation is standard practice among securities analysts, who are the functional equivalents of credit rating agencies for the equity markets. Admittedly, such a periodic review will add a cost to the ratings process.

To address this, the rating agency might enter into a three or four year prepaid contract with the issuer under which it agreed to review its rating at least annually. Although the cost for such a periodic review would be higher, the one advantage of a highly concentrated market is that the rating agency has the leverage to pass this cost onto the issuer and the underwriter. Indeed, to the extent that NRSRO ratings are regarded as "regulatory licenses" because many investors can only legally buy securities having such a rating, there is little prospect that issuers or underwriters will dispense with ratings.

2. Forum Shopping. As noted earlier, issuers pay advisory and consulting fees to rating agencies before they seek a formal rating and often never request a rating if they are advised that they are unlikely to get the desired rating. This can produce forum shopping (while still being profitable to the rating agency which receives the advisory fee but not the rating fee). This should be a special focus of disclosure with a requirement being placed both on the issuer and the rating agency to disclose payments made and received where no rating was issued by the rating agency.

3. Fee Disclosure. Ratings agencies should disclose the total fees that they have received from an issuer and/or underwriter over a defined period (say, two years) in connection with any disclosure that they make of their rating. This responds to the problem of the currently invisible "advisory" fee.

4. Forfeiture of NRSRO Status. Another means towards improving transparency would be to require disclosure of the default rates of each rating agency for each generic class of product. Some rating agencies (most notably, Moody's) already go part way in this direction, but there is a need for standardization. Default rates can be calculated in different ways (for example, if an interest payment is delayed for six months and then

paid, is this a default?). The SEC should define what "default" or "impaired" means so as to include delayed payments, then calculate these rates over five year cumulative periods, and publish its results on its own website. This would enable consumers to engage in a simple, one stop comparison. For smaller institutions (e.g., small pension funds, or college endowments), the in-house financial staff is often thin and only a simplified comparison will enable them to shop effectively.

C. Improving Competition. After decades of resisting new entrants into the small select club of NRSRO members, the SEC has changed its position and recently admitted new members into the NRSRO club in the wake of Congress's clear instructions in the Credit Rating Agency Reform Act of 2006. But there are still significant barriers to entry, as "reputational capital" is not easily acquired. Moreover, some new entrants work on a "subscriber pays" model that issuers and underwriters may fear (because such a more independent rating agency may be more critical of issuers).

Against this backdrop, both to enhance market transparency and competition, two proposals, clearly within the SEC's jurisdiction, make sense:

1. An SEC Sponsored Web Site. This web site would should display the ratings for each security on which multiple ratings were issued by NRSRO agencies. The net result would be to inform consumers of the multiplicity of ratings and the possible divergences in view.

The SEC's core function has always been disclosure, and this proposal does nothing more than reduce the costs to consumers of learning multiple opinions. Many potential consumers may not be aware of the existence of "subscriber paid" rating agencies or that the SEC had approved them as NRSROs whose opinions carried legal weight for institutions needing an “investment grade” rating. Obviously, this proposal dovetails with the earlier suggestion that the SEC disclose on the same web site the five year default rates for each NRSRO for each generic class of product. Sunlight is the best disinfectant (as the SEC has long known), and this proposal places no cost on issuers or underwriters.

2. Equal Access to Proprietary Data Made Available to Any NRSRO. Selective disclosure is today disfavored, at least since the adoption of Regulation FD in 2000, but it persists in one special context: credit ratings. Issuers may not wish to deal with new credit rating agencies, even though the SEC has found them qualified. The issuer may deny them access to non-public information that it makes available to the traditional “issuer-paid” agencies for precisely the same reasons that public companies formerly withheld data from securities analysts who had been critical of them: either to punish them or to preclude them from issuing critical reports. Today, because of a special exemption in Regulation Fair Disclosure (“Regulation FD”) for credit rating agencies, the issuer can selectively give information to favored rating agencies, but withhold the same data from other NRSROs. This is a barrier to competition that should be eliminated. Any such mandated disclosure of issuer data could be conditioned on the recipient NRSRO’s undertaking to maintain the confidentiality of the disclosed information. The key goals of this proposal are both to assure rater independence and objectivity and to promote greater competition.

IV. Conclusion

For transparency to be achieved and for competition to work in this special context, meaningful steps must be taken because the status quo has not and will not result in either. The foregoing proposals are intended to work in unison: (1) a certification requirement that would require the critical information about the quality of the collateral to be verified (or at least sampled) by an independent expert; (2) an SEC clearinghouse that would exhibit both ratings and default rate data by rating grade and product for each rating agency; and (3) a periodic review and re-assessment requirement to curb the persistence of stale ratings. All these steps are within the existing power of the SEC to implement without new legislation. Other proposals (such as forfeiture of NRSRO status) may, however, require legislation.