

reduce dependence on individual issuers or subscribers.

- NRSRO recognition could be conditioned on a rating agency's deriving less than a certain percentage of its revenues (e.g., 3%) from a single source to help assure that the NRSRO operates independently of economic pressures from individual customers.

To address the concerns raised with regard to conflicts of interest, the Commission requests commenters' views in response to the following questions:

Question 37: Should the Commission condition NRSRO recognition on an NRSRO's agreeing to document its procedures that address potential conflicts of interest in its business including, but not limited to, potential issuer and subscriber influence? If so, what other potential conflicts should these procedures address?

Question 38: To what extent could concerns regarding potential conflicts of interest be addressed through the disclosure of existing and potential conflicts of interest when an NRSRO publishes ratings?

Question 39: Should NRSRO recognition be conditioned on an NRSRO prohibiting employees involved in the ratings process (e.g., rating analysts and rating committee members) from participating in the solicitation of new business and from fee negotiations? Would conditioning NRSRO recognition on a rating agency's establishing strict firewalls between employees in these areas and credit analysts address potential conflicts? Should the Commission also address the credit analyst compensation structure to minimize potential conflicts of interest?

Question 40: Should NRSRO recognition be conditioned on an agreement by a rating agency not to offer consulting or other advisory services to entities it rates? Could concerns regarding conflicts of interest be addressed by limiting or restricting consulting or advisory services offered by rating agencies?

Question 41: Should NRSRO recognition be conditioned on a prohibition on credit rating analysts employed by NRSROs from discussing rating actions with subscribers? If not prohibited, should the Commission adopt limits on contacts between analysts and subscribers? Or are existing remedies—antifraud, contractual, or otherwise—sufficient to deter inappropriate disclosures to subscribers?

Question 42: Should NRSRO recognition be conditioned on a rating agency having adequate financial resources (e.g., net assets of at least

\$100,000, or annual gross revenues of at least \$1,000,000) to reduce dependence on individual issuers or subscribers?

Question 43: Should NRSRO recognition be conditioned on a rating agency not deriving more than a certain percentage of its revenues (e.g., 3%) from a single source to help assure that the NRSRO operates independently of economic pressures from individual customers?

Question 44: Are there other ways to address potential conflicts of interest in the credit rating business or to minimize their consequences?

E. Alleged Anticompetitive, Abusive, and Unfair Practices

Some have alleged that certain of the larger credit rating agencies abused their dominant market position by engaging in certain aggressive competitive practices. Fitch complained that S&P and Moody's were attempting to squeeze it out of certain structured finance markets by engaging in the practice of "notching"—lowering their ratings on, or refusing to rate, securities issued by certain asset pools (e.g., collateralized debt obligations), unless a substantial portion of the assets within those pools were also rated by them.

With respect to unsolicited ratings, some commenters have questioned the appropriateness of a rating agency's attempting to induce an issuer to pay for a rating the issuer did not request (e.g., sending a bill for an unsolicited rating, or sending a fee schedule and "encouraging" payment).

To address these issues, the Commission could develop the following approach:

- NRSRO recognition could be conditioned on a rating agency's implementing adequate procedures to prevent anticompetitive and other unfair practices, including prohibitions on: (1) Requiring a ratings client to purchase an ancillary service as a precondition for performance of the ratings service and, perhaps, other anticompetitive practices (even those that would not violate the antitrust laws); and (2) engaging in specified "strong-arm" tactics with respect to unsolicited ratings.

The Commission invites commenters' views concerning the existence of these practices and requests commenters' views on the following questions:

Question 45: Should the Commission identify specific anti-competitive practices that NRSROs would agree to prohibit as a condition to NRSRO recognition? If so, what are those practices?

Question 46: Would it be sufficient to condition NRSRO recognition on the

adoption of procedures intended to prevent anticompetitive, abusive, and unfair practices from occurring?

Question 47: Should NRSRO recognition specifically be conditioned on an NRSRO's agreeing to forbear from requiring issuers to purchase ancillary services as a precondition for performance of the ratings service?

Question 48: Should NRSRO recognition specifically be conditioned on an NRSRO's not engaging in specified practices with respect to unsolicited ratings (e.g., sending a bill for an unsolicited rating, sending a fee schedule and "encouraging" payment, indicating a rating might be improved with the cooperation of the issuer)?

F. Information Flow

Several commenters have stressed the importance of transparency in the ratings process. Among other things, they assert that fluctuations in security prices in response to rating actions could often be less pronounced if credit rating agencies disclosed more information about the assumptions underlying their ratings (e.g., specific events that might prompt a rating change), as well as the information and documents reviewed by them in reaching a ratings decision (e.g., whether the issuer participated in the rating process).

To address issues that have been raised with regard to information flow from credit rating agencies, the Commission could develop the following approach:

- NRSRO recognition could be conditioned on a rating agency's implementing procedures to assure appropriate disclosure of key information about its ratings and rating processes, including: (1) Widespread public dissemination of its ratings; (2) identifying an unsolicited rating as such; (3) annual disclosure of specified ratings performance information; and (4) public disclosure of the key bases of, and assumptions underlying, the ratings decision (pursuant to generally accepted industry standards to be developed by a broad-based committee of market participants).

- NRSRO recognition could be conditioned on a rating agency's implementing procedures to assure appropriate public notification when it ceases rating/following an issuer.

To explore ways to improve the quality of information available to users of credit ratings, the Commission requests commenters' views on the following questions:

Question 49: Should the Commission address concerns about information flow from rating agencies? If so, should