



April 25, 2008

Via Electronic Mail

Ms. Kim Allen
IOSCO General Secretariat
C/ Oquendo 12
28006 Madrid
Spain
k.allen@iosco.org

Re: Response to Request for Comment: “IOSCO Technical Committee Consultation Report on Credit Rating Agencies”

Dear Ms. Allen:

The Commercial Mortgage Securities Association (CMSA) submits this letter in response to IOSCO’s request for comment on the Consultation Report on the Role of Credit Agencies in Structured Financial Markets (the “Report”), issued by the IOSCO Technical Committee in March 2008.

CMSA is a global trade organization with its primary mission being to promote the ongoing strength, liquidity and viability of commercial real estate capital market finance worldwide. Based in New York, with a government relations office in Washington, DC, as well as a strong presence in Canada, Europe and Japan, CMSA is the collective voice for the entire market, with a diverse global membership of over 400 member firms represented by more than 5,000 individuals who actively engage in commercial real estate capital market finance activities. These members embody the full spectrum of the commercial mortgage-backed securities (CMBS) market, including senior executives at the largest banks and investment banks, insurance companies, investors such as money managers and specialty finance companies, servicers, other service providers to the industry, and the rating agencies, including DBRS, Fitch Ratings, Moody’s, and Standard & Poor’s. CMSA and its members are the leaders in setting standards and maintaining a favorable investing environment for the more than \$900 Billion in outstanding CMBS issuance in the United States, and we submit these comments in an effort to further advance these dual objectives.

In the Report, the IOSCO CRA Task Force makes a number of recommendations for modifying the IOSCO CRA Code of Conduct. As a preliminary matter, we would like to commend the Task Force

for not requiring that structured finance products be rated on a different scale from corporate and municipal bonds. Having said that, CMSA is concerned about Recommendation 17 of the proposal which states that –

A CRA should disclose whether it uses a separate set of rating symbols for rating structured finance products, and its reasoning for doing so or not doing so. In any case, a CRA should clearly define a given rating symbol and apply it in the same manner for all types of products to which the symbol is assigned.

For the reasons outlined below, CMSA does not believe that credit rating agencies (“CRAs”) should have to justify rating structured finance vehicles in the same manner as corporate or municipal bonds. Such a requirement would not only be unnecessarily burdensome, it could have the same effect as a specific requirement that separate ratings be used. That is, because of the stigma it attaches to the use of a single set of rating symbols by a CRA, such a disclosure requirement could result in separate rating schemes becoming a de facto rule or best practice in the industry to the detriment of the capital finance markets and the borrowers for which those markets provide liquidity.

For many years, the credit rating agencies have maintained that like ratings are comparable across asset classes because, fundamentally, the underlying assessment is the same regardless of asset class – the likelihood that the bond obligations will be repaid in accordance with their terms. Use of a separate rating structure for structured finance products would be inconsistent with this longstanding principle and create significant confusion for the investors in all of the capital markets. Although we agree with assertions by some that structured securities in the commercial sector have exhibited collectively stronger performance than similarly rated corporate securities, we are concerned about the impact that certain changes to the ratings classifications could have at this time. Accordingly, CMSA strongly believes that a separate ratings scale could make the structured products market even more volatile by adding to investor confusion, and such action should be avoided. Moreover, investors would be forced to revise their investment policies to incorporate the new rating structure, develop a new analytical and monitoring infrastructure to interpret the new ratings, and determine whether they need to have a specific investment allocation for each asset class. Additionally, regulatory capital requirements of Basel II are based upon the current rating methodology - so any rating changes would require a change to Basel II for bank investors. Unfortunately, these unintended consequences would increase costs for investors and further erode liquidity that is critical to the extension of credit for borrowers.

CMSA has consistently opposed attempts to directly impose requirements for separate ratings for structured finance, and the “back door” implementation of such a policy by requiring disclosure of the rationale for not creating a separate rating structure or structures for structured finance products is equally problematic. Enclosed is a copy of a letter that we wish to submit for your record on this issue on behalf of several associations that represent a broad spectrum of professionals active in both the primary and secondary real estate and non-real estate asset-backed finance markets.

As an alternative to requiring that CRAs “justify” their decisions regarding rating symbols in disclosure, CMSA members, including investors, issuers and other CMBS market participants, would welcome the CRAs’ issuance of additional analysis about the potential risk characteristics of rated bond loan pools, as well as additional and targeted transparency related to the underlying rating methodology that is being employed in determining rating assessments. Our current recommendations are below. As an introductory comment, though, we note that our suggestions are intended to build upon rather than replace any disclosures the rating agencies currently are providing.

With that in mind, our specific recommendations are as follows –

- *Methodology.* CMSA encourages CRAs to publish and update on an as needed basis¹ –
 - Their policies and procedures related to CMBS valuations that are more specific than those currently published;
 - A clear guide to their model methodology, including specific guidance regarding the weighting of various inputs;
 - When model methodology is modified or updated, an explanation of the impact of that modification or update on existing deal ratings, if any; and
 - An explanation of their internal committee processes, including any modifications to governance procedures that have recently been, or will be, instituted.
- *Pre-Sale Reports.* CMSA suggests that CRAs should not solicit or receive outside editorial comments on their pre-sale reports and adopt a standard pre-sale report template. This template could change over time but should include items such as –
 - Reference to published documents with their latest methodology that can be found on their websites.
 - A discussion of at least the largest 10 loans with an explanation of the material underwriting assumptions for those loans and an outline of any material assumptions in performance, both positive and negative.
 - A discussion of the material strengths and material concerns on the deal and at loan level in the Strengths and Concerns section that will point to the heart of an issue. For example, is it a strength if 1% of a deal is shadow rated or is it a concern if 22% of the pool is office properties?
 - A conduit analysis that compares the proposed transaction to the average rated deal over a rolling time frame; and
 - Although we understand the current rating methodologies of shadow rated loans, it would be beneficial to include more detail around the CRA’s underwriting and valuation assumptions (e.g., their cap rates, vacancies, base rents, etc.).

¹ We note that it appears that all of this information – and more – is required to be disclosed under the regulations issued by the United States Securities and Exchange Commission in June, 2007. See 17 CFR § 240.17g-2(a)(6) (requiring a registered “Nationally Recognized Statistical Rating Organization” to maintain a publicly available “record documenting the established procedures and methodologies used by the nationally recognized statistical rating organization to determine credit ratings.”) See also SEC Form NRSRO, Instructions for Exhibit 2 (the requisite “description of the procedures and methodologies used in determining credit ratings” which is required to be “sufficiently detailed” including, among other things, “the quantitative and qualitative models and metrics used to determine credit ratings”).

- *Surveillance Press Releases.* CMSA acknowledges that CRAs typically provide standard press releases but CMSA believes that frequent communication is more important now than ever before. We suggest that all rating agencies adopt a standard surveillance press release that would include, among other items, a discussion of why a deal was upgraded or downgraded; the current percentage that have defeased; any loss estimates; any weakness in the largest 10 loans; information on the “shadow rated” loans included in the deal, including the current rating for each in order to compare ratings with those in the pre-sale report; and an explanation of the impact, if any, of changes in the “shadow rated” loans ratings on the deal ratings, particularly when the shadow rated loan rates fall from investment grade to below investment grade.

Ultimately, CMSA believes that new and targeted disclosure will benefit all of the CMBS market participants. We appreciate the opportunity to comment on this proposal and look forward to working with IOSCO and the credit rating agencies to help accomplish that goal. Please do not hesitate to contact us with questions and comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dottie Cunningham", with a long horizontal flourish extending to the right.

Dottie Cunningham
Chief Executive Officer
Commercial Mortgage Securities Association

Enclosure