INVESTMENT COMPANY INSTITUTE

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

December 14, 2009

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: *Credit Ratings Disclosure (File No. S7-24-09)*

Dear Ms. Murphy:

The Investment Company Institute[1] supports the Commission's continuing efforts to address longstanding concerns regarding credit ratings and the oversight of Nationally Recognized Statistical Rating Organizations ("NRSROs"). As significant investors in the securities markets,[2] the Institute has consistently supported initiatives to strengthen the incentives for NRSROs and rating agencies to produce quality ratings and to reform the disclosure and transparency requirements imposed on rating agencies.[3] The Commission's proposal to require disclosure of information regarding credit ratings used by registrants should assist investors to better understand individual ratings, their reliability and their limitations.[4]

---

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $11.33 trillion and serve almost 90 million shareholders.

[2] As of June 2009, registered investment companies held 27 percent of outstanding U.S. issued stock; 47 percent of outstanding U.S. commercial paper; 33 percent of U.S. tax-exempt debt; 9 percent of U.S. corporate and foreign bonds; and 14 percent of U.S. Treasury and government agency debt.

[3] *See, e.g.,* Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence Harmon, Acting Secretary, Securities and Exchange Commission, dated July 25, 2008 and Statement of Paul Schott Stevens, President and CEO, Investment Company Institute, SEC Roundtable on Oversight of Credit Rating Agencies, April 15, 2009.

[4] *See Credit Ratings Disclosure,* SEC Release No. 33-9070 (October 7, 2009), 74 FR 53086 (October 15, 2009) ("Release"), available at: http://www.sec.gov/rules/proposed/2009/33-9070.pdf. While our comments focus on the impact of the proposal on funds as investors, the proposal would require disclosure of information regarding credit ratings used by closed-

I. Mandatory Disclosure of Information About Ratings Used by Registrants

The Institute supports the Commission's proposal to require disclosure of certain information about credit ratings when a registrant uses a rating in connection with a registered offering. Specifically, the proposal would provide for the disclosure of the elements of the securities that the credit rating addresses; the material limitations or qualifications on the credit rating; and any related published designation assigned by the credit rating agency with respect to the security. The Institute believes that this information should contribute to investors' overall understanding of the ratings, including any limitations of the ratings, used in registration documents.

The Release notes that mutual funds sometimes obtain non-credit ratings issued by rating agencies and use such ratings in connection with the offer or sale of their securities (*e.g.*, credit quality ratings, volatility ratings, and principal stability ratings) and requests comment whether these types of ratings should be required to be disclosed as part of a fund's prospectus or statement of additional information if the ratings are used in connection with the offer or sale of an investment company's securities. The Institute believes that requiring such disclosure is not necessary and may cause retail investors to place undue reliance upon those ratings.[5] These ratings also apply only to particular aspects of the fund and have the potential to inappropriately affect an investor's decisionmaking process. Further, the types of non-credit ratings noted above are sufficiently dissimilar from credit ratings that any new disclosure about non-credit ratings may differ substantially from the disclosure proposed in the Release. Therefore, if the Commission determines that disclosure of these non-credit ratings is necessary, we recommend that such disclosure be the subject of a separate rulemaking proposal.

II. Disclosure Related to Conflicts of Interest

The proposal would require disclosure of certain information regarding credit ratings to address potential conflicts of interest. Specifically, the proposal would require that registrants identify the party that is compensating the rating agency for providing the rating, a description of any other non-rating services, the aggregate fee paid for such services, and the fee paid for the credit rating. The Institute supports these disclosures. By requiring the inclusion of this information about ratings in registration materials, investors will have a better understanding of the relationship between the issuer and the rating agency, including areas in which conflicts of interest may be present. Most significantly, the proposed disclosure regarding fees and services should highlight for investors potential compensation-

---

end funds in connection with a registered offering of securities. We discuss our specific comments regarding the impact of the proposal on closed-end funds at the end of the comment letter.

[5] *See, e.g.*, Letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated November 28, 2005 (NASD bond mutual fund volatility ratings proposal).

related conflicts of interest that may have influenced the rating decision of the rating agency, such as the desire to garner more business from the registrant.

III. Disclosure Related to Ratings Shopping

The Institute supports the proposed disclosure of information that will permit investors to evaluate whether ratings shopping or inflation has occurred. Specifically, the proposal would require that if a registrant has obtained a credit rating and is required to disclose that rating, then (1) all preliminary ratings of the same class of securities as the final rating that are obtained from credit rating agencies other than the rating agency providing the final rating must be disclosed and (2) any credit rating obtained by the registrant but not used must be disclosed. In addition to the rating, the proposal would require disclosure of the same information as is proposed to be required for a final rating. Together, such disclosure should provide investors with a more complete picture of any conflicts of interest associated with a registrant's efforts to obtain a favorable rating and a rating agency's efforts to obtain business. Similarly, this information will be important for investors to assess whether a rating may require additional scrutiny because of the potential for ratings inflation.

IV. Disclosure of Updates to Previously Disclosed Ratings

The proposal would require registrants to file updated disclosure on Form 8-K under the Securities Exchange Act of 1934 when a previously disclosed rating is changed, *e.g.,* withdrawn or no longer being updated. Disclosure would be required within four business days of notification to the registrant by the rating agency that it has made a decision to change the rating. One of the primary concerns raised by investors during the credit crisis was the absence of regularly updated information on ratings. The proposal would address these concerns and assist in providing investors with current information on a timelier basis.

V. Impact of Proposal on Closed-End Funds

The proposal would require disclosure of information regarding credit ratings used by closed-end funds in connection with a registered offering of securities. As the Release notes, like other companies, closed-end funds sometimes issue senior securities that are rated by one or more credit rating agencies and currently are permitted to voluntarily disclose these credit ratings in their registration statements.

The Institute generally believes that the proposed disclosures strike the appropriate balance between the costs and burdens on closed-end funds to gather and incorporate the requisite information from rating agencies into their registration statements and providing investors with information to better understand the meaning of ratings included within such registration statements.

Specifically, the proposal would amend Form N-2 under the Investment Company Act to require that closed-end funds include credit ratings disclosure in their registration statements under the Securities Act and the Investment Company Act. Currently, closed-end funds must briefly discuss in Form N-2 the significance of the rating, the basis upon which ratings are issued, any conditions or guidelines imposed by a NRSRO for the fund to maintain the rating, and whether or not the registrant intends, or has any contractual obligation, to comply with these conditions or guidelines. The proposal would replace those requirements with the same disclosure requirements proposed for corporate registrants (as discussed above). The Institute believes that the content of the proposed disclosure requirements is of similar relevance to closed-end fund investors and therefore appropriate for closed-end funds.

The proposal also would amend Exchange Act Rules 13a-11(b) and 15d-11(b) to require a closed-end fund to file a current report on Form 8-K containing the disclosures regarding changes to a credit rating within the period specified in Form 8-K unless substantially the same information has been previously reported by the fund. The Release requests comment whether it is appropriate to require closed-end funds to file reports on Form 8-K disclosing credit rating changes or whether closed-end funds should be permitted to disclose changes to credit ratings through other methods.

The Institute urges the Commission not to adopt the Form 8-K filing requirement for closed-end funds. Unlike corporate issuers, closed-end funds typically are not subject to the Form 8-K reporting regime. We do not believe it is necessary or appropriate to now subject them to the Form 8-K reporting regime in this manner. Rather, we recommend that the Commission require closed-end funds to disseminate information regarding credit rating changes through another method (or combination of methods) of disclosure that is reasonably designed to provide notice to their shareholders.[6] Such methods could include, but would not be limited to, a press release distributed through a widely disseminated news or wire service, or posting of information on an investment company's website.[7] This approach would satisfy the Commission's goal of identifying a means for

[6] The recommended approach is similar to Regulation FD, which gives issuers the choice of making public disclosure of certain information by filing a Form 8-K with the Commission or by disseminating "the information through another method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of information to the public." Rule 101(e) permits issuers, including closed-end funds, to comply with the public disclosure requirements of Regulation FD by filing a Form 8-K but also gives them the flexibility to use other means of disclosure. *See* Rule 101(e) under the Exchange Act; and SEC Release Nos. 33-7881, 34-43154, IC-24599 (August 15, 2000); 65 Fed. Reg. 51716, 51724 (August 24, 2000) (Regulation FD adopting release) ("[t]he regulation does not require use of a particular method, or establish a 'one size fits all' standard for disclosure; rather, it leaves the decision to the issuer to choose methods that are reasonably calculated to make effective, broad, and non-exclusionary public disclosure, given the particular circumstances of that issuer.").

[7] We would not oppose providing corporate issuers, if applicable, with similar alternative methods of disseminating the information required under the proposal.

closed-end funds to provide notice to investors of a credit rating change while minimizing their reporting burdens.

* * * * *

We look forward to working with the Commission as it continues to examine these critical issues. In the meantime, if you have any questions, please feel free to contact me directly at (202) 326-5815, Ari Burstein at (202) 371-5408, or Heather Traeger at (202) 326-5920.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan
General Counsel

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Daniel Gallagher, Co-Acting Director
Michael Macchiaroli, Associate Director
Division of Trading and Markets

Andrew J. Donohue, Director
Division of Investment Management

Meredith Cross, Director
Blair Petrillo, Special Counsel
Division of Corporation Finance