FAQ on Issuer and Underwriter Obligations Under the New Rating Agency Web Site Rules

In December 2009, the US Securities and Exchange Commission (the Commission) amended its rules regulating nationally recognized statistical rating organizations (NRSROs). The compliance date of these new rules is June 2, 2010.[1] This Update addresses some common questions facing issuers and underwriters as the June 2 compliance date approaches.

Among other changes, the Commission amended rule 17g-5[2] to facilitate unsolicited ratings from NSROs that were not hired by issuers, sponsors, or underwriters to rate particular asset-backed securities (ABS) and other structured finance products by enabling these non-hired NRSROs (Accessing NRSROs) to access the same rating-related information as "Hired NRSROs.". While these rules only apply directly to NRSROs, they require Hired NRSROs to obtain commitments from issuers, sponsors or underwriters to facilitate the process by maintaining password-protected web sites (Arranger Sites) containing rating-related information and providing access to Accessing NRSROs. Since rule 17g-5 applies directly to NRSROs, each NRSRO will have to reach its own compliance positions on some of the interpretive issues addressed below. Even on issues of that type, we have provided our own views as to an interpretation the NRSROs could reasonably reach.

The adopting release (the Adopting Release) for these amendments uses the term "arranger" to refer collectively to issuers, sponsors and underwriters that may be required to maintain Arranger Sites. For consistency, we use the same term below. However, we expect that issuers will usually be the parties that actually carry out these new responsibilities, since they generally hire NRSROs and have a significant interest in controlling rating-related information.

Overview of the Web Site Rules

The basic structure of the new provisions of rule 17g-5 (the Web Site Rules) is as follows:

- New paragraph (b)(9) identifies the following practice as a conflict of interest for an NRSRO: issuing or maintaining a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction (a Structured Finance Product) that was paid for by an arranger.
- In order to be permitted to engage in this practice, notwithstanding the conflict, new paragraph (a)(3) requires Hired NRSROs to take specified steps, which the SEC intends to mitigate the impact of the conflict. Specifically a Hired NRSRO that wishes to issue or maintain ratings on Structured Finance Products where the rating is paid for by an arranger must:
  - » Maintain on a password-protected web site (a Hired NRSRO Site) a list (the Ratings in Process List) of each Structured Finance Product for which it is currently in the process of determining an initial credit rating, with specified information including the name of the issuer, the date the rating process was initiated and the address of an Arranger Site where an arranger is maintaining the information described below;
  - » Provide Accessing NRSROs access to its Hired NRSRO Site (subject to the certification requirement discussed under Question 15 below); and
  - » Obtain a written representation, that can reasonably be relied upon, from an issuer or

other arranger of each Structured Finance Product on the Hired NSRO's Ratings in Process List to the effect that the issuer or other arranger will maintain an Arranger Site and will:

- Provide Accessing NRSROs access to such Arranger Site (subject to the certification requirement discussed under Question 15 below); and
- Post on such Arranger Site all information the arranger provides (or contracts with a third party to provide) to the Hired NRSRO for the purpose of (i) determining the initial credit rating for the Structured Finance Product or (ii) rating surveillance, all in a manner indicating which information currently should be relied on to determine or monitor the credit rating.

While arrangers are not directly subject to the Web Site Rules, it is clear that the Commission intends to take seriously any failures by arrangers to perform the obligations they undertake,[3] and NRSROs will essentially not be permitted to provide ratings unless arrangers undertake those obligations.

Questions About Parties

1. WHAT (OR WHO) IS AN "ISSUER, SPONSOR OR UNDERWRITER"?

In the Adopting Release, the Commission refers to issuers, sponsors and underwriters of rated securities as "arrangers." The Web Site Rules themselves refer to "the issuer, sponsor, or underwriter of each such security" as the entity from which each Hired NRSRO must obtain representations about posting rating-related information. The terms issuer, sponsor and underwriter do not appear to be defined, but it is reasonable to assume that they will be interpreted consistently with their meanings elsewhere in the federal securities laws, particularly Regulation AB (for "issuer" and "sponsor"). Also, while the term "underwriter" is not used in the Rule 144A/Regulation S offering context, it seems likely that Hired NRSROs will treat initial purchasers in those transactions as "underwriters" under the Web Site Rules.

2. BETWEEN THE ISSUER, THE SPONSOR AND THE UNDERWRITER OF A GIVEN STRUCTURED FINANCE PRODUCT, WHICH ONE SHOULD DO THE REQUIRED POSTING? HOW WILL THESE UNDERSTANDINGS BE DOCUMENTED?

The parties should clarify by contract which party is agreeing to make the required postings in each deal, and the Hired NRSRO should be satisfied with its compliance so long as some reasonably reliable party provides the required representations. The Adopting Release states that "The Commission believes it is likely that the required representations will be part of the standard contracts entered into between NRSROs and arrangers."[4] As between sponsors and underwriters, it may be wise to memorialize the agreement as to which party is responsible in the underwriting agreement or 144A initial purchase agreement, as well as addressing related matters discussed under Question 11 below. As indicated above, we expect that issuers will usually be the parties that carry out these new responsibilities, since they generally hire NRSROs and have a significant interest in controlling rating-related information.

Questions About Which Deals are Covered

3. WHAT TYPES OF SECURITIES AND RATINGS ARE COVERED?

These new requirements apply to initial ratings and ratings surveillance on "a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction" (where the rating is paid for by an arranger). In this Update, we refer to such securities and money market instruments as "Structured Finance Products." The Adopting Release makes clear that this category is meant to cover "the full range of structured finance products, including, but not limited to, securities collateralized by static and actively managed pools of loans or receivables (e.g., commercial and residential mortgages, corporate loans, auto loans, education loans, credit card receivables, and leases), collateralized debt obligations, collateralized loan obligations, collateralized mortgage obligations, structured investment vehicles, synthetic collateralized debt

obligations that reference debt securities or indexes, and hybrid collateralized debt obligations."[5] At a minimum, it should cover any "asset-backed security" within the Regulation AB definition, which the Adopting Relase characterizes as a "narrower" definition.[6]

We see no basis for limiting the scope of the Web Site Rules to publicly offered ABS. Any rating on a Structured Finance Product that is paid for by an arranger appears to be covered, regardless whether the product is offered publicly or in a private placement or other offering exempt from registration under the Securities Act (including offerings under Rule 144A or Regulation S, subject to the territorial issues addressed under Question 4 below).

We also see no basis for excluding "shadow" ratings or "private" ratings, unless the NRSRO that issues such an opinion decides that it is not a "rating" within the meaning of the Web Site Rules. We are not currently aware of any basis for such a decision.

4. ARE FOREIGN OFFICES OR AFFILIATES OF NRSROS COVERED? WILL THESE RULES APPLY TO NON-US TRANSACTIONS OFFERED SOLELY OUTSIDE THE UNITED STATES?

The Commission did not answer these questions directly in the Web Site Rules or the Adopting Release. While the Commission did not provide any indication that it intended the Web Site Rules to apply to transactions offered by non-US issuers solely to investors outside the United States, NRSRO practices in this area may depend as much on practical administrative issues as on a strict legal interpretation of the territorial application of the Web Site Rules. All or most of the largest NRSROs are active in multiple jurisdictions and must coordinate their compliance with regulations imposed in all the jurisdictions where they operate. Given the international nature of the debt markets and the difficulties in deciding when a particular jurisdiction's rules may apply, NRSROs may tend to move towards a "highest common denominator" for their global operations. This is the approach that at least two agencies seem to have taken recently with respect to a requirement imposed by the European Union to affix a special designation to ratings of structured finance instruments. Fitch and Standard & Poor's recently announced that they would implement that special designation globally.[7] Similarly, the NRSROs may decide to apply the Web Site Rules on a global basis, rather than have to make difficult judgments as to when they do or do not apply.

5. ARE ARRANGERS REQUIRED TO POST INFORMATION ABOUT DEALS FOR WHICH THE INITIAL RATING PROCESS STARTED BEFORE THE JUNE 2 COMPLIANCE DATE, IF THE RATING HAS NOT BEEN ISSUED PRIOR TO THAT DATE?

Although the Adopting Release is not completely clear on this point, we believe the more natural reading of the Web Site Rules suggests that no such posting is required. Hired NRSROs do not have to begin complying with the Web Site Rules until June 2, and the obligation to obtain representations from issuers or other arrangers only arises under the Web Site Rules. Consequently, arrangers presumably will not provide the related representations with respect to transactions where NRSROs are hired prior to June 2, and an arranger's obligation to post rating-related information to an Arranger Site only arises from those representations.

6. HOW DO THE WEB SITE RULES AFFECT STRUCTURED FINANCE PRODUCTS (INCLUDING ASSET-BACKED COMMERCIAL PAPER (ABCP) AND TERM ABS) WITH RATINGS LETTERS ISSUED BEFORE JUNE 2?

Only securities for which initial ratings are sought (or possibly in process—see answer to Question 5 above) on or after the compliance date should be affected.[8] Arrangers' obligations to post information on their Arranger Sites only arise from the representations they provide to Hired NRSROs. Because those representations have not been provided with respect to Structured Financed Products rated in the past, and presumably will not be provided for any additional Structured Finance Products rated prior to June 2, arrangers should have no obligations to post rating-related information (whether relating to the initial rating or surveillance) for those Structured Finance Products.

Some existing ABCP conduits are subject to "prior review" requirements, where one or more NRSROs review each new transaction prior to funding by the conduit, and the conduit may not fund a new transaction unless the applicable NRSROs confirm that doing so will not lead to a withdrawal or downgrade of the conduit's ratings. The best view is that these subsequent no-downgrade letters are part of the surveillance process, not new initial ratings. Consequently, we would expect that requests for no-downgrade letters will not lead to a new engagement for an initial rating. As a result, no representations will be obtained from arrangers, the pre-existing conduit's ABCP should not be placed on a Ratings in Process List and information provided with respect to new customer transactions in pre-existing conduits should not have to be posted. The same would be true of the no-downgrade confirmation letters often required for new issuances out of master trusts (though the ratings on the new series would often be initial credit ratings).

7. ARE THERE SPECIAL CONSIDERATIONS FOR ABCP CONDUITS FIRST RATED AFTER THE COMPLIANCE DATE?

If the initial rating on a conduit's ABCP is subject to the Web Site Rules, then surveillance of that rating is also subject to the rules. To the extent any Hired NRSRO for a new conduit receives information relating to the transactions in which the new conduit invests as part of ratings surveillance, that information must be posted to the conduit's Arranger Site.

8. HOW ABOUT WHEN AN ABCP CONDUIT INVESTS IN RATED ABS OR OTHER RATED STRUCTURED FINANCE PRODUCTS OR OBTAINS A RATING ON STRUCTURED FINANCE PRODUCTS THAT IT ALREADY OWNS?

Regardless of whether or not the ABCP issued by a particular conduit is subject to the Web Site Rules, it appears that, after the compliance date, ratings on Structured Finance Products purchased by any ABCP conduit will be subject to the Web Site Rules. This would be true regardless of whether the conduit is just one of many purchasers or is the sole purchaser or one of a few purchasers in a bespoke deal or club deal.

Some bank sponsors of ABCP conduits are currently negotiating with customers to require existing transactions to obtain ratings in the future to lower risk-based capital requirements for the sponsor. If these ratings are engaged (or possibly in process) on or after June 2, 2010, the Web Site Rules would seem to apply to the new ratings.

Questions About What, When and How Long Arrangers Must Post

9. GENERALLY, WHAT TYPES OF INFORMATION MUST ARRANGERS POST (AND WHEN)?

An arranger is required to post *all information* that the arranger provides (or contracts with a third party to provide) to any hired NRSRO for the purpose either of determining the initial credit rating for the Structured Finance Product or of rating surveillance. As to the initial credit rating, the Web Site Rules specifically mention (1) information about the characteristics of the assets underlying or referenced by the security or money market instrument, and (2) the legal structure of the security or money market instrument. As to surveillance, element (1) above is repeated, with additional reference to information about performance. Element (2) is not repeated. However, we would not place too much importance on these differences. The main point is what we emphasized above: "all information" relevant to the initial rating or surveillance that is provided to a Hired NRSRO is to be posted.

All of the required information is to be posted at the same time such information is provided to the Hired NRSRO and in a manner indicating which information currently should be relied on to determine or monitor the credit rating. Master trust issuers may face some uncertainty in deciding how much of the periodic information they provide for surveillance of previously issued series should also be posted and/or identified as information related to initial ratings of new series. Many master trust issuers faced similar questions in connection with the risk assessment measures under the Term Asset-Backed Lending Facility (TALF) and may look to their decisions in that context for guidance.

10. HOW SHOULD ARRANGERS DEAL WITH INFORMATION TRANSMITTED ORALLY, DURING TELEPHONE CALLS OR IN-PERSON DUE DILIGENCE SESSIONS?

Issuers will have to make judgments as to whether they have gone beyond their written submissions—as opposed to just explaining them—and provide written supplements in the latter case. In the Adopting Release, the Commission briefly discusses oral communications, stating:

> The Commission acknowledges that the requirements of paragraph (a)(3) of Rule 17g–5 as a whole likely will formalize the process of information exchange from the arranger to the NRSRO for structured finance products, including the written submission of information that may, in the past, have been provided orally. However, the Commission believes this will be a positive development. First, conveying information in writing rather than orally may promote credit rating accuracy in that the NRSRO analyst will be able to refer back to a document containing the information rather than his or her memory. Second, a more formal process of information exchange will create a better record of the data provided to the NRSRO, which will make it easier for Commission staff to understand the process used to determine the credit rating during an after-the-fact review of whether the NRSRO adhered to its procedures and methodologies for determining such credit ratings. This will benefit the NRSRO's compliance and internal audit functions as well as the Commission's examination function and benefit users of credit ratings.[9]

11. WHEN AN ISSUER TAKES ON THE ARRANGER SITE RESPONSIBILITIES, HOW SHOULD IT HANDLE COMMUNICATIONS BETWEEN ITS UNDERWRITERS AND HIRED NRSROS?

Issuers faced similar issues in connection with TALF risk assessments, where issuers were required to provide the Federal Reserve Bank of New York with the same information that they provided to NRSROs. In those transactions, issuers generally obtained contractual undertakings from "underwriters" (including initial purchasers in Rule 144A transactions) relating to the information that the underwriters provided to NRSROs. Because the Web Site Rules require that information be posted to the Arranger Site at the same time that it is provided to a Hired NRSRO, these arrangements will have to be carefully drafted and monitored, and the delivery of rating-related information will have to be carefully coordinated between the issuer and underwriters.

12. HOW SHOULD PERIODIC RATING AGENCY VISITS BE TREATED?

Arrangers will have to consider the facts and circumstances of each visit, but in our experience most rating agency visits relate to the process of determining an initial rating, surveillance of existing ratings or both. Consequently, we would expect arrangers will usually conclude that they should post any written information provided at these meetings, and the same sort of judgments about oral communications will have to be made here as are discussed under Question 10 above. To avoid doubt, some issuers may post transcripts or audio recordings of the full conversations at these visits on their Arranger Sites.

13. WHAT IF ARRANGERS PROVIDE DIFFERENT INFORMATION TO DIFFERENT HIRED NRSROS?

While arrangers could consider setting up multiple Arranger Sites to post information provided to different Hired NRSROs, it is worth noting that the Adopting Release contemplates (in a somewhat different context) that all of the information that an Accessing NRSRO needs will be available "in a single location."[10]

14. FOR HOW LONG DOES AN ARRANGER HAVE TO MAINTAIN INFORMATION ON ITS ARRANGER SITE ONCE IT HAS BEEN POSTED?

Unfortunately, neither the Web Site Rules nor the Adopting Release provide much guidance on this question. It is clear that an NRSRO can remove securities from its Ratings in Process List once the rating has been issued. However, the Adopting Release contemplates that even after a security is removed from a Ratings in Process List, "the information on the arranger's Website would remain available."[11] There does not seem to be a clear end date for the arranger's maintenance requirement, though once the

deal has paid off (including through a clean-up call) there would be little point in keeping the information posted. The same would be true if the rating request was withdrawn before the rating was issued.

Besides the US requirements, evolving EU requirements may also bear on the market outcome here, as NRSROs and the market may tend towards global practices that clear the regulatory hurdles in all major markets.

Questions About Confidentiality and Disclosure

15. WHAT ASSURANCES DO ARRANGERS HAVE AS TO THE USE THAT WILL BE MADE OF THE INFORMATION THEY POST?

In order to be entitled to access either a Hired NRSRO Site or an Arranger Site, an Accessing NRSRO must furnish the Commission, for each calendar year for which it is requesting a password, a certification as to the matters set out below.[12] Hired NRSROs and Arrangers are entitled to receive a copy of such certification before providing access. The required certification must indicate that the Accessing NRSRO:

- Will access the Hired NRSRO Sites and Arranger Sites solely for the purpose of determining or monitoring credit ratings; and
- Will keep the information it accesses confidential and treat it as material nonpublic information subject to its written policies and procedures.[13]

In addition, the certification must include representations as to the Accessing NRSRO's intent and track record relating to the actual use of accessed information to issue ratings.

Besides obtaining these certifications, we expect that most Arrangers will set-up a click-through confidentiality agreement as part of the procedure for signing into Arranger Sites, and the Adopting Release permits this, stating:

> the representations an NRSRO must obtain from an arranger will not prevent the arranger from employing a simple process requiring non-hired NRSROs to agree to keep the information they obtain from the arranger confidential, provided that such a process does not operate to preclude, discourage, or significantly impede non-hired NRSROs' access to the information, or their ability to issue a credit rating based on the information. For example, an arranger could interpose a confidentiality agreement in a window (click-through screen) on the Internet Web site that appears after the NRSRO successfully enters its password to access the information and which requires the NRSRO to hit an "Agree" button before being directed to the information to be used to determine the credit rating. Presumably, this confidentiality agreement would contain the same terms as the confidentiality agreement between the arranger and the hired NRSRO.[14]

16. WHAT DUE DILIGENCE PROCEDURES WILL BE PERMITTED IN ORDER TO ENSURE THAT AN ACCESSING NRSRO IS ENTITLED TO ACCESS AN ARRANGER SITE AND THAT AN INDIVIDUAL ACCESSING THE WEB SITE IS, IN FACT, AN EMPLOYEE OF AN ELIGIBLE ACCESSING NRSRO?

The Web Site Rules do not preclude due diligence procedures to enable the arranger to ensure that an individual accessing an Arranger Site is entitled to do so, provided that "such a process does not operate to preclude, discourage, or significantly impede non-hired NRSROs' access to the information, or their ability to issue a credit rating based on the information."[15] For example, arrangers could take any or all the following steps:

- Ask for information such as the name, company and e-mail address of an individual requesting a password to access the Arranger Site and only provide a password to valid e-mail addresses that clearly indicate the name of an NRSRO rather than, for example, an e-mail address at "gmail.com";
- Require a click-through certification that the NRSRO meets the requirements to access the web site; and
- Call the main telephone number of the requesting NRSRO and interview an appropriate employee regarding such topics as the number of times the NRSO has accessed Arranger Sites and the number and percentage of unsolicited ratings the NRSRO has issued.

17. WILL POSTING INFORMATION TO AN ARRANGER SITE CREATE ISSUES UNDER REGULATION FD?

The Commission amended Regulation FD to eliminate this issue.[16]

Questions About Web Site Logistics

18. CAN AN ARRANGER CONTRACT WITH A THIRD PARTY TO HOST AND MAINTAIN ITS ARRANGER SITE?

We believe the "maintain" language in 17g-5(a)(3)(iii)(A) provides enough flexibility for a responsible outsourcing of these functions, though the arranger would ultimately remain responsible for its contractors' performance.

19. CAN ARRANGERS LEVERAGE PRE-EXISTING SITES WHERE THEY POST MONTHLY INVESTOR REPORTS?

The Web Site Rules can be read as contemplating that each Arranger Site will be a single site.[17] However, it should be acceptable for the Arranger Site to have a link to the periodic reporting site, making the Arranger Site provide access to everything.

Questions About the Impact of Unsolicited Ratings Under Other Regulations

20. CAN UNSOLICITED RATINGS AFFECT THE RISK-BASED CAPITAL REQUIREMENTS FOR BANKS INVESTING IN STRUCTURED FINANCE PRODUCTS?

Banks are permitted to calculate their risk-based capital requirements for some rated ABS based in part on a "risk weight" that is determined by the lowest rating that has been assigned to the ABS. The so-called "general risk-based capital rules" (Basel I) applicable to US banks do not differentiate between solicited and unsolicited ratings for this purpose. As a result, it appears that an unsolicited rating that was lower than solicited ratings of the same ABS could drive the risk-based capital result under the general rules. In contrast, the so-called "advanced approaches" (Basel II) risk-based capital rules, at least as effect in the United States, base the risk weight on the lowest solicited rating, avoiding this issue. If unsolicited ratings become common, we would hope that the regulators might conform the general rules to the advanced approaches rules and disregard unsolicited ratings for this purpose.

21. CAN UNSOLICITED RATINGS AFFECT THE ELIGIBILITY OF A STRUCTURED FINANCE PRODUCT FOR PURCHASE BY A MONEY MARKET FUND?

This should seldom (if ever) occur in practice, though it seems to be theoretically possible in the unusual circumstances described below.

Money market funds are regulated pursuant to rule 2a-7 under the Investment Company Act. Although recently amended to (among other things) remove some of its references to ratings, rule 2a-7 continues to rely to a substantial degree on ratings from NRSROs in defining minimum credit standards for fund investments. Some important rating standards in the rule are phrased in terms of specified ratings from the "Requisite NRSROs." Ordinarily, "Requisite NRSROs" means any two NRSROs from a list of at least four that must be designated annually by the fund's board of directors, but it can mean just one of the designated NRSROs if only one of them maintains a rating of the subject security.

When a fund relies on ratings from two of its designated NRSROs (which we would expect to occur in the vast majority of cases), no issues should arise from any unsolicited ratings. By definition, a security has the specified ratings from the Requisite NRSROs as long as any two of the designated NRSROs have provided the minimum ratings, regardless of what other ratings other designated NRSROs may have provided, whether on a solicited or unsolicited basis.

However, if a fund seeks to satisfy the rating requirement based on just one rating, believing that only one NRSRO has rated a Structured Finance Product that the fund is buying, the fund could find itself unexpectedly holding an ineligible security because, unknown to the fund, another of its designated NRSROs rates the Structured Finance Product on an

unsolicited basis. This would not generally require an NRSRO to dispose of the affected Structured Finance Product. Also, it should seldom occur, since most Structured Finance Products have two ratings from NRSROs, and the two NRSROs providing those ratings seem likely to be included in a purchasing fund's designated group.

Endnotes

1 Amendments to Rules for Nationally Recognized Statistical Rating Organizations; Proposed Rules for Nationally Recognized Statistical Rating Organizations; Final Rule and Proposed Rule, FEDERAL REGISTER, Vol. 74, p. 63832 (December 4, 2009), available at http://edocket.access.gpo.gov/2009/pdf/E9-28496.pdf. For a general summary of the December changes and other related developments last year see our prior update, "Rating Agency Reform – 2009 in Review," available at http://www.mayerbrown.com/publications/article.asp?id=8407&nid=6.

2 17 CFR 240.17g-5.

3 Adopting Release, note 152. The Commission also expects that the ongoing relationship between NRSROs and arrangers will enable NRSROs to, in some sense, police arranger's compliance: "if, for example, an NRSRO had knowledge that an arranger had not complied with its representations, the NRSRO would be on notice that future reliance on that arranger might not be reasonable. The Commission believes it is likely that the required representations will be part of the standard contracts entered into between NRSROs and arrangers and that an arranger that fails to comply with its representations will risk having the hired NRSRO withdraw the credit ratings paid for by that arranger and being denied the ability to obtain credit ratings from the hired NRSRO in the future, given that the hired NRSRO may not be able to reasonably rely on the safe harbor. The Commission believes that the consequences of losing the safe harbor should provide sufficient incentive for NRSROs to ensure that they obtain the representations from arrangers as set forth in paragraph (a)(3)(iii) and that arrangers comply with their representations." Adopting Release, p. 63847. See also Adopting Release, p. 63849 (discussion of click-through confidentiality agreements).

4 Adopting Release, p. 63847.

5 Adopting Release, p. 63844.

6 *Ibid.*

7 See our alert on this topic, at http://www.mayerbrown.com/publications/article.asp?id=8604&nid=6.

8 Adopting Release, p. 63846.

9 Adopting Release, pp. 63847-8.

10 Adopting Release, p. 63847.

11 Adopting Release, n. 139.

12 Rule 17g-5(e) provides verbatim required language for the certification, which we have summarized here.

13 These policies and procedures are required pursuant to section 15E(g)(1) of the Securities Exchange Act and 17 CFR 240.17g–4.

14 Adopting Release, p. 63849.

15 *Ibid.* Although the quoted text refers specifically to a click-through confidentiality agreement, as discussed under Question 15 above, we would expect the Commission to take the same view on other due diligence-related log-in procedures.

16 See discussion at Adopting Release, p. 63850.

17 Both 17g-5(a)(3)(iii)(C) and (D) refer to "such" password-protected site, implying that there is just one. Also, as noted under Question 10 above, the Adopting Release contemplates that all of the information that an Accessing NRSRO needs will be available "in a single location". Adopting Release, p. 63847.

If you have any questions with regard to the Web Site Rules, or any other topic addressed above, please contact one of the authors of this Client Update listed below or any of the partners in the Securitization practice. Please go here http://www.mayerbrown.com/securitization/ to learn more about our Securitization practice.

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