

### III. Discussion

The Commission, when adopting Rule 17g-5(c)(1), noted that it intended to monitor how the prohibition operates in practice, particularly with respect to asset-backed securities, and whether exemptions may be appropriate.<sup>2</sup> The Commission has previously granted three temporary exemptions from Rule 17g-5(c)(1), including one on June 28, 2008 to Realpoint, as Morningstar was formerly known, in connection with its initial registration as an NRSRO ("Realpoint Exemptive Order").<sup>3</sup> The Commission noted several factors in granting that exemption, including the fact that the revenue in question was earned prior to the adoption of the rule, the likelihood of smaller firms such as Realpoint being more likely to be affected by the rule, Realpoint's expectation that the percentage of total revenue provided by the relevant client would decrease, and the increased competition in the asset-backed securities class that could result from Realpoint's registration. In granting the Realpoint Exemptive Order, the Commission also noted that an exemption would further the primary purpose of the Credit Rating Agency Reform Act of 2006 ("Rating Agency Act") as set forth in the Report of the Senate Committee on Banking, Housing, and Urban Affairs accompanying the Rating Agency Act: To "improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry".<sup>4</sup> Previously, on February 11, 2008, the Commission, citing the same factors it later set forth in the Realpoint Exemptive Order, issued a similar order granting LACE LLC ("LACE") a temporary exemption from the requirements of Rule 17g-5(c)(1) in connection with LACE's registration as an NRSRO ("LACE Exemptive Order").<sup>5</sup> Most recently, the Commission issued an order granting Kroll Bond Rating Agency, Inc. ("Kroll"), formerly known as LACE, a temporary, limited and conditional exemption from Rule 17g-5(c)(1) allowing Kroll to enter the market for rating structured finance products ("Kroll Exemptive Order").<sup>6</sup> In

this order, the Commission noted that an exemption is consistent with the Commission's goal of improving ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry.

The Commission believes that a temporary, limited and conditional exemption allowing Morningstar to expand in the market for rating structured finance products on an issuer-paid basis is consistent with the Commission's goal of improving ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry. In order to maintain this exemption, Morningstar will be required to publicly disclose in Exhibit 6 to Form NRSRO, as applicable, that the firm received more than 10% of its net revenue in fiscal years 2011 and 2012 from a client or clients that paid it to rate asset-backed securities. This disclosure is designed to alert users of credit ratings to the existence of this specific conflict and is consistent with exemptive relief the Commission has previously granted to Realpoint, LACE and Kroll. In addition to Morningstar's existing obligations as an NRSRO to maintain policies, procedures, and internal controls, by the terms of this order, Morningstar will also be required to maintain policies, procedures, and internal controls specifically designed to address the conflict created by exceeding the 10% threshold. Furthermore, the exemption would also require that revenue from a single client does not exceed 25% of Morningstar's total net revenue for either fiscal year 2011 or 2012.

Section 15E(p) of the Exchange Act, as added by Section 932(a)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, requires Commission staff to conduct an examination of each NRSRO at least annually. As part of this annual examination regimen for NRSROs, Commission staff will closely review Morningstar's activities with respect to managing this conflict and meeting the conditions set forth below and will consider whether to recommend that the Commission take additional action, including administrative or other action.

The Commission therefore finds that a temporary, limited and conditional exemption allowing Morningstar to expand in the market for rating structured finance products on an issuer-paid basis is consistent with the Commission's goal, as established by the Rating Agency Act, of improving ratings

quality by fostering accountability, transparency, and competition in the credit rating industry, and is necessary and appropriate in the public interest and is consistent with the protection of investors, subject to Morningstar's making public disclosure of the conflict created by exceeding the 10% threshold; its maintenance of policies, procedures and internal controls to address that conflict; and that revenue from a single client does not exceed 25% of Morningstar's total net revenue for either the fiscal year ending December 31, 2011 or the fiscal year ending December 31, 2012.

### IV. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,

*It is hereby ordered* that Morningstar Credit Ratings, LLC, formerly known as Realpoint LLC, is exempt from the conflict of interest prohibition in Exchange Act Rule 17g-5(c)(1) until January 1, 2013, with respect to any revenue derived from issuer-paid ratings, provided that: (1) Morningstar Credit Ratings, LLC publicly discloses in Exhibit 6 to Form NRSRO, as applicable, that the firm received more than 10% of its total net revenue in fiscal year 2011 or 2012 from a client or clients; (2) in addition to fulfilling its existing obligations as an NRSRO to maintain policies, procedures, and internal controls, Morningstar Credit Ratings, LLC also maintains policies, procedures, and internal controls specifically designed to address the conflict created by exceeding the 10% threshold; and (3) revenue from a single client does not exceed 25% of Morningstar's total net revenue for either the fiscal year ending December 31, 2011 or the fiscal year ending December 31, 2012.

By the Commission.

**Elizabeth M. Murphy,**  
*Secretary.*

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### DEPARTMENT OF STATE

**[Public Notice 7767; Guatemala Docket No. DOS-2012-0011; Mali Docket No. DOS-2012-0012]**

### Notice of Meeting of the Cultural Property Advisory Committee

There will be a meeting of the Cultural Property Advisory Committee April 24-27, 2012, at the Department of State, Annex 5, 2200 C Street NW., Washington, DC. Portions of this

<sup>2</sup> Release No. 34-55857 (June 5, 2007), 72 FR 33564, 33598 (June 18, 2007).

<sup>3</sup> Release No. 34-58001 (June 23, 2008), 73 FR 36362 (June 26, 2008).

<sup>4</sup> See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850, Credit Rating Agency Reform Act of 2006, S. Report No. 109-326, 109th Cong., 2d Sess. (Sept. 6, 2006).

<sup>5</sup> Release No. 34-57301 (Feb. 11, 2008), 73 FR 8720 (Feb. 14, 2008).

<sup>6</sup> Release No. 34-65339 (Sept. 14, 2011), 76 FR 58319 (Sept. 20, 2011).

meeting will be closed to the public, as discussed below.

During the closed portions of the meeting, the Committee will review the proposal to extend the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Objects and Materials from the Pre-Columbian Cultures of Guatemala (MOU)* [Docket No. DOS-2012-0011] and the *Agreement Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century* [Docket No. DOS-2012-0012]. Additionally, the Government of Guatemala has asked that the MOU be amended to include ethnological ecclesiastical material representing the Colonial Period of its cultural heritage.

An open session to receive oral public comment on these two proposals will be held on Tuesday, April 24, 2012, 2:30 p.m. EDT.

Also during the closed portions of the meeting, the Committee will continue its review of a new cultural property request from the Government of the Republic of Bulgaria seeking import restrictions on archaeological and ethnological material. Please see the link to the Public Summary of this request at <http://exchanges.state.gov/heritage/whatsnew.html>.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The text of the Act and the subject MOU and Agreement, as well as related information, may be found at <http://exchanges.state.gov/heritage/culprop.html>.

If you wish to attend the open session on April 24, 2012, you should notify the Cultural Heritage Center of the Department of State at (202) 632-6301 no later than 5 p.m. (EDT) April 3, 2012, to arrange for admission. Seating is limited. When calling, please specify if you have special accommodation needs. The open session will be held at 2200 C St. NW., Washington, DC 20037. Please plan to arrive 15 minutes before the beginning of the open session.

If you wish to make an oral presentation at the open session, you must request to be scheduled and must submit a written text of your oral comments, ensuring that it is received no later than April 3, 2012, 11:59 p.m.

(EDT), via the eRulemaking Portal (see below), to allow time for distribution to Committee members prior to the meeting. Oral comments will be limited to allow time for questions from members of the Committee. All oral and written comments must relate specifically to the determinations under Section 303(a)(1) (19 U.S.C. 2602) of the Convention on Cultural Property Implementation Act, pursuant to which the Committee must make findings. This statute can be found at the Web site noted above.

If you do not wish to make oral comment, but still wish to make your views known, you may send written comments for the Committee to consider. Again, your comments must relate specifically to the determinations under Section 303(a)(1) (19 U.S.C. 2602) of the Convention on Cultural Property Implementation Act, pursuant to which the Committee must make findings. Submit all written materials electronically through the eRulemaking Portal (see below), ensuring that they are received no later than April 3, 2012, 11:59 p.m. (EDT). Our adoption of this procedure facilitates public participation, implements Section 206 of the E-Government Act of 2002, Public Law 107-347, 116 Stat. 2915, and supports the Department of State's "Greening Diplomacy" initiative which aims to reduce the State Department's environmental footprint and reduce costs.

**Confidential written comments:** If you wish to submit information that is privileged or confidential in your comments, pursuant to 19 U.S.C. 2605(i)(1), do so via regular mail, commercial delivery, or hand delivery. Only comments reasonably asserted to be confidential will be accepted via those methods.

As a general reminder comments submitted by fax or by email are not accepted. In the past, twenty copies of texts over five pages in length were requested. Please note that this is no longer necessary; all comments, other than confidential comments, should now be submitted via the eRulemaking Portal only. Please submit comments only one time.

- **Electronic Delivery.** To submit comments electronically, go to the Federal eRulemaking Portal (<http://www.regulations.gov>), enter the Docket No. DOS-2012-0011 for Guatemala or Docket No. DOS-2012-0012 for Mali, and follow the prompts to submit a comment. For further information, see <http://exchanges.state.gov/heritage/whatsnew.html>.

- **Comments submitted in confidence only: Regular Mail or Commercial**

**Delivery.** Cultural Heritage Center (ECA/P/C), SA-5, Fifth Floor, Department of State, Washington, DC 20522-0505.

**Hand Delivery.** Cultural Heritage Center (ECA/P/C), Department of State, 2200 C Street NW., Washington, DC 20522-0505.

**Are Comments Private?** No. Comments submitted in electronic form will be posted on the site <http://www.regulations.gov>. Because the comments cannot be edited to remove any identifying or contact information, the Department of State cautions against including any information in an electronic submission that one does not want publicly disclosed (including trade secrets and commercial or financial information that is privileged or confidential pursuant to 19 U.S.C. 2605(i)(1)). The Department of State requests that any party soliciting or aggregating comments received from other persons for submission to the Department of State inform those persons that the Department of State will not edit their comments to remove any identifying or contact information, and that they therefore should not include any information in their comments that they do not want publicly disclosed.

**On Closed Meetings:** As noted above, portions of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h), the latter of which stipulates that "The provisions of the Federal Advisory Committee Act shall apply to the Cultural Property Advisory Committee except that the requirements of subsections (a) and (b) of section 10 and 11 of such Act (relating to open meetings, public notice, public participation, and public availability of documents) shall not apply to the Committee, whenever and to the extent it is determined by the President or his designee that the disclosure of matters involved in the Committee's proceedings would compromise the government's negotiation objectives or bargaining positions on the negotiations of any agreement authorized by this title." The President's designee has made such a determination.

Dated: February 29, 2012.

**Ann Stock,**

*Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

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