

Order ("Exemptive Order") granting Realpoint an exemption from Exchange Act Rule 17g-5(c)(1) until January 1, 2009.¹

The Commission finds that the application furnished by Realpoint is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g-1 (17 CFR 240.17g-1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application and Exemptive Order, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly,

It is ordered, under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of Realpoint LLC with the Commission as an NRSRO under Section 15E of the Exchange Act for the class of credit ratings described in clause (iv) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58001]

Order Granting Temporary Exemption of Realpoint LLC From the Conflict of Interest Prohibition in Rule 17a-5(c)(1) Under the Securities Exchange Act of 1934

June 23, 2008.

I. Introduction

The Credit Rating Agency Reform Act of 2006 ("Rating Agency Act"),¹ enacted on September 29, 2006, defined the term "nationally recognized statistical rating organization" ("NRSRO"), added Section 15E to the Securities Exchange Act of 1934 ("Exchange Act"), and provided authority for the Securities and Exchange Commission ("Commission") to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies. Exchange Act Rule 17g-1 (17 CFR 240.17g-1), and Form NRSRO (17 CFR 249b.300), prescribe the process for a credit rating agency to apply for registration. Rule 17g-1 and Form NRSRO were effective on June 18, 2007,

and the other rules, Rules 17g-2 through 17g-6 (17 CFR 240.17g-2 through 17g-6), became effective on June 26, 2007.²

In particular, Rule 17g-5(c)(1) prohibits an NRSRO from issuing or maintaining a credit rating solicited by a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equaling or exceeding 10% of the total net revenue of the NRSRO for the fiscal year. In adopting this rule, the Commission stated that such a person would be in a position to exercise substantial influence on the NRSRO, which in turn would make it difficult for the NRSRO to remain impartial.³

II. Application and Exemption Request of Realpoint LLC

Realpoint LLC ("Realpoint"), a credit rating agency, furnished to the Commission an application for registration as an NRSRO under Section 15E of the Exchange Act for the class of credit ratings described in clause (iv) of Section 3(a)(62)(B) of the Exchange Act.⁴ Based on the information provided in the application, Realpoint has a conflict of interest that would cause the firm to be in violation of Rule 17g-5(c)(1) if Realpoint became registered. Specifically, for the fiscal year ending December 31, 2007, Realpoint maintained credit ratings solicited by a person that provided Realpoint with 10% or more of its total net revenue for that year.

Realpoint has requested⁵ that the Commission exempt it from Rule 17g-5(c)(1) for the fiscal year ending December 31, 2007 on the grounds that the prohibition hinders its ability as a small entity to further develop its business issuing credit ratings on asset-backed securities. Realpoint also stated that it expects the percentage of net revenue attributable to the relevant client to decrease to approximately 7.5% of its fiscal year 2008 net revenue.

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.⁶ The Commission notes that the revenue in question was earned by Realpoint before it submitted its application for registration and in the year before Rule 17g-5 was adopted, which limited the time for Realpoint to adjust its activities to conform to the requirements of the rule. In addition, the Commission recognizes that, given Realpoint's size, it is more likely that the firm would be affected by Rule 17g-5(c)(1) than a larger credit rating agency with a more diversified client base. Further, the Commission notes that Realpoint has stated that it expects that the percentage of total net revenue provided by the client will be below 10% for fiscal year 2008. Finally, the Commission notes that the threshold in Rule 17g-5(c)(1) is, of necessity, a bright line, but activities that exceed that threshold may or may not necessarily raise the concerns that are the basis for the rule. Hence, the Commission believes that it is important for the Commission to consider for each application the specific facts and circumstances of the applicant and whether to grant an exemption from Rule 17g-5(c)(1). Moreover, in this instance, the Commission recognizes that granting this exemption furthers the primary purpose of the Rating Agency Act, which is to enhance competition in the highly concentrated ratings industry. Granting Realpoint's registration will increase the number of NRSROs registered in the asset-backed security class, which could increase competition.

For these reasons, the Commission finds that granting Realpoint an exemption from Rule 17g-5(c)(1) for calendar year 2008 is necessary and appropriate in the public interest and is consistent with the protection of investors.⁷ The exemption will expire on January 1, 2009 (Realpoint's fiscal year ends on December 31, 2008). The Commission believes that providing Realpoint with the opportunity to be registered as an NRSRO during this time frame is an appropriate approach to addressing the unique circumstances of a small credit rating agency, while balancing this against the goal of Rule 17g-5(c)(1)—to prohibit a conflict that has the potential to influence a credit rating agency's impartiality. Consequently, this exemption is

² Release No. 34-55857 (June 5, 2007), 72 FR 33564, 33564-65 (June 18, 2007).

³ *Id.* at 33598.

⁴ This class of credit ratings is for "issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations * * *) ("asset-backed securities"). Section 3(a)(62)(B)(iv) of the Exchange Act.

⁵ Letter dated April 28, 2008 to the Commission from Robert Dobilas, CEO and President of Realpoint.

⁶ Release No. 34-55857 (June 5, 2007), 72 FR 33564, 33598 (June 18, 2007).

⁷ Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person from any rule under the Exchange Act, to the extent that the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. 15 U.S.C. 78mm.

¹ Release No. 34-58001 (June 23, 2008).

² Pub. L. No. 109-291 (2006).

conditioned on Realpoint disclosing in Exhibit 6 to Form NRSRO that the firm received more than 10% of its net revenue in fiscal year 2007 from a client that paid it for a credit rating. This disclosure is designed to alert users of credit ratings to the existence of this specific conflict.

Simultaneously with this Order, the Commission is issuing an Order granting the registration of Realpoint with the Commission as an NRSRO under Section 15E of the Exchange Act.⁸

IV. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,

it is hereby ordered that Realpoint LLC is exempt from the conflict of interest prohibition in Exchange Act Rule 17g-5(c)(1) until January 1, 2009, provided that Realpoint LLC discloses in Exhibit 6 to Form NRSRO that the firm received more than 10% of its net revenue in fiscal year 2007 from a client that paid it for a credit rating.

By the Commission.

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57986; File No. SR-FINRA-2008-016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Align the Reporting Requirements and Dissemination Protocols for OTC Equity Transactions Involving Foreign Securities With All Other OTC Equity Securities

June 18, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 25, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. On June 12, 2008, FINRA submitted Amendment No. 1 to the proposed rule change. The Commission is publishing

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to: (1) Amend NASD Rule 6620 to align the reporting requirements for over-the-counter ("OTC") equity transactions involving foreign securities with the reporting requirements for other OTC equity transactions; and (2) align the dissemination protocols for all last sale reports of OTC equity transactions. The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at FINRA's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 6620(a) generally requires that transactions in OTC Equity Securities that are executed between 8 a.m. and 8 p.m. Eastern Time be reported to the OTC Reporting Facility within 90 seconds of execution.³ This 90-second reporting requirement currently applies to transactions in OTC Equity Securities that are domestic equity securities, ADRs, and Canadian issues.⁴ Thus, all ADRs and Canadian

issues, including those that are not registered with the Commission and otherwise subject to financial reporting, are subject to 90-second reporting under NASD Rule 6620. All other foreign equity securities are excluded from the 90-second reporting requirement and instead must be reported by 1:30 p.m. Eastern Time the day after the transaction is executed.⁵ Although not required, a member may choose to report transactions in foreign securities within 90 seconds of execution.⁶

In addition to the disparity in the trade reporting requirements under NASD Rule 6620, there is also a disparity in the way last sale information of OTC equity transactions is disseminated to the marketplace. Although last sale information for transactions in domestic OTC Equity Securities reported pursuant to Rule 6620 is disseminated on a real-time basis, irrespective of whether the security is registered with the Commission, there is no uniformity regarding the dissemination of last sale information for transactions in ADRs and foreign securities. Last sale reports of ADRs and Canadian issues that are quoted on the OTC Bulletin Board ("OTCBB"), which requires registration with the Commission, are disseminated on a real-time basis. However, only summary information is disseminated at the end of each trading day for OTC ADRs and Canadian issues that are not quoted on the OTCBB, whether or not they are registered with the Commission. Transactions in foreign securities, other than Canadian issues and ADRs, that are quoted on the OTCBB are disseminated on a real-time basis if they are received on the day of the trade. However, as noted above, there is no current requirement to report these trades to FINRA within 90 seconds of execution, or even on the trade date. If an OTC transaction in a foreign security is not reported on the trade date, last sale information for that transaction is not disseminated.

The bifurcation with respect to dissemination of OTC ADRs and foreign securities arose in the broader context of the establishment and evolution of the OTCBB. When real-time reporting for OTC Equity Securities, including ADRs and Canadian securities, was proposed in 1992, FINRA agreed not to publish quotations and trade reports of foreign securities and ADRs in order to avoid any reconsideration of the exemption from registration pursuant to SEC Rule

⁸ Release No. 34-58000 (June 23, 2008).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For purposes of the NASD Rule 6600 Series, "OTC Equity Securities" means equity securities for which real-time trade reporting is not otherwise required. See NASD Rule 6600. NASD Rule 6610(d) further defines "OTC Equity Security" as "any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting."

⁴ An ADR is a negotiable instrument that represents an ownership interest in a specified number or fraction of securities that have been deposited with a depositary. The deposited securities are typically equity securities of a foreign issuer, and the depositary is usually a U.S. bank or trust company. See Securities Exchange Act Release No. 48482 (September 11, 2003), 68 FR 54644 (September 17, 2003) (File No. S7-16-03).

⁵ See NASD Rule 6620(a)(3)(C)(iii).

⁶ See NASD Rule 6620 n.1.