

August 9, 2021

**Via Electronic Mail
Employee Benefits Security Administration
Office of Exemption Determinations
U.S. Department of Labor**

Re: 86 FR 33360 - Proposed Amendments to Class Exemptions to Remove Credit Ratings

Ladies and Gentlemen:

I write on behalf of Kroll Bond Rating Agency, LLC (KBRA), a global, full-service rating agency registered with the Securities and Exchange Commission (SEC) as a Nationally Recognized Statistical Rating Organization (NRSRO). We appreciate this opportunity to respond to the Department of Labor's (DOL's) proposed amendments to class prohibited transaction exemptions to implement section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).¹

About KBRA

Since our establishment in 2010, KBRA's mission has been to provide transparent ratings and thorough research. Our widely available research challenges entrenched and conventional thinking, and this approach has resonated powerfully with investors. Today KBRA has more than 400 employees in offices in the United States, United Kingdom and Europe and has issued more than 42,500 ratings representing \$2.2 trillion in rated issuances. KBRA is currently one of the five largest rating agencies globally and the largest established after the Global Financial Crisis.

KBRA's Perspective on Credit Rating Reform and 939A

KBRA was established in the wake of the financial crisis with a mission to change the credit rating agency status quo, and as a result we are in a unique position to comment on this issue. We agree with Congress in its finding that credit ratings from the largest incumbent agencies "contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world."² In including credit rating agency reforms in the Dodd-Frank Act, Congress sought, among other goals, to promote competition in the credit rating space to better protect investors.

KBRA supports the DOL fully implementing section 939A of Dodd-Frank, and appreciates the DOL re-opening the comment period, in light of regulatory developments since 2013. We support clear and specific guidance being provided to Employee Retirement Income Security Act of 1974 (ERISA) fiduciaries regarding alternative standards of creditworthiness to enable them to fulfil their fiduciary obligations consistent with full implementation of 939A.

Investor Guidelines

In addition to fully implementing 939A, we also support the DOL providing clarification regarding references to specific NRSROs in investment guidelines. Today, many institutional investors, including private pensions, require the use of one or more of the largest NRSROs by name in their investor guidelines. Many of those guidelines are 40 years old or more and were written before other rating agencies existed.

However, we believe that this practice does not best serve ERISA plans or their participants, because such guidelines do not ensure that plans have full and open access to the best research and may preclude them from participating in certain issuances. KBRA has successfully worked with several individual plan fiduciaries to change their guidelines to permit the use of any NRSRO. We appreciate the success we have had in this regard, but this approach will take many years to change common practices sufficiently to the benefit of all

¹ [Public Law 111-203](#), 124 Stat. 1376 (2010).

² *Id.*, section 931(5).



plans and plan participants.

We believe that all investor guidelines across financial markets should permit the use of any SEC-registered NRSRO that is licensed to rate the relevant asset class. We believe that in addition to fully implementing 939A, the DOL can provide important guidance by clarifying to ERISA fiduciaries that opening investor guidelines to use “any NRSRO” is consistent with their fiduciary obligations. We believe strongly this is merely a clarification of current law, and additional clarification by the DOL would encourage plan fiduciaries to examine whether their guidelines facilitate full access to the best available research on behalf of plan participants.

Conclusion

We greatly appreciate your attention to this important issue and would be happy to provide additional information on our methodology and approach when assessing creditworthiness, to the extent that would be helpful as you finalize this rulemaking. We would also be happy to provide additional information regarding ERISA plan investment guidelines and look forward to engaging further as your process unfolds.

Sincerely,

/s
Jim Nadler
President and CEO