



Athilon Structured Investment Advisors LLC
140 East 45th Street, 32nd Floor
New York, New York 10017

February 17, 2011

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”):
Section H.5 (“Additional Interpretive Issues – Legacy Portfolios” of Release No. 34-
63452, File No. S7-39-10)

Dear Mr. Stawick and Ms. Murphy:

Athilon Structured Investment Advisors LLC appreciates the opportunity to comment on Section H.5 (“Additional Interpretive Issues – Legacy Portfolios”) of Release No. 34-63452, File No. S7-39-10. This response relates to Athilon Asset Acceptance Corp. (“AAA Corp.”) and its parent guarantor, Athilon Capital Corp. (“ACC”, and together with AAA Corp., the “Companies”). AAA Corp. is a “credit derivative product company” (“CDPC”).

Background on CDPCs

CDPCs were established to write credit protection in the form of credit default swaps in accordance with operating guidelines and a related capital model test approved by the relevant rating agencies. The CDPC operating guidelines and business model contemplated primarily a “buy and hold” strategy, with portfolio limitations on certain matters such as reference portfolio size, overall leverage, credit concentrations, etc. In addition, the CDPCs were not permitted under the operating guidelines to post collateral and entered into credit default swaps with institutional counterparties on an uncollateralized basis. All of AAA Corp.’s counterparties are banks or bank affiliates and AAA Corp. has transacted with its counterparties under ISDA Master Agreements.

After the events of late 2007 through 2008, counterparties refused to execute credit default swaps with CDPCs on an uncollateralized basis. That, together with certain triggering events under the relevant operating guidelines, have caused most CDPC portfolios, including AAA Corp.’s, to be in “run-off” (i.e., no new transactions are being entered into and the outstanding transactions are maturing in accordance with their terms). Currently, AAA Corp. has a portfolio with a current overall negative mark-to-market position and the mark is expected to converge to zero as the portfolio nears maturity; over 95% of AAA Corp.’s book will mature by December 31, 2014.

Application of “major swap participant” or “major security-based swap participant” requirements

If a CDPC were to be characterized as a “major swap participant” or “major security-based swap participant” under the Dodd-Frank Act or the rules thereunder, it appears that such CDPC would have, among other things, net capital and collateral posting requirements. If a CDPC were unable to comply with any such requirement, in addition to potential statutory penalties, it is possible that an event of default could be triggered under the ISDA Master Agreements governing the credit default swaps. Any such default would cause significant losses to be realized by the CDPC and by the CDPC’s counterparties. In addition, holders of subordinated debt issued by the CDPCs would be likely to incur losses¹. Those losses are unlikely to be incurred, or would be substantially less, if the CDPC’s portfolio were allowed to run-off. In the case of AAA Corp., it appears highly unlikely that any counterparty to AAA Corp. would suffer a significant loss in the case of such a run-off.

Goals of Legislation

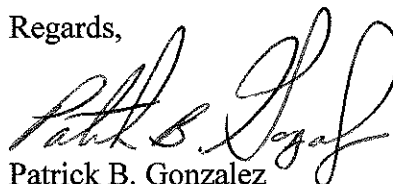
The Dodd-Frank Act is intended, among other things, to reduce risk in the marketplace and to promote the stability of the swap market. Application of the “major swap participant” or “major security-based swap participant” requirements to CDPCs would likely have the opposite effect by potentially causing the CDPCs and their counterparties to realize significant losses that would not otherwise occur. Moreover, because the CDPCs are no longer entering into new derivative transactions, there will be no offsetting benefit accompanying the regulatory oversight of such companies.

Proposal

We hereby request that CDPCs be excluded from the definition of “major swap participant” and “major security-based swap participant” because the CDPCs are no longer entering into new credit default swap transactions and the existing swap portfolios are in run-off. Therefore, we propose that the definitions of a “major participant” and “major security-based swap participant” provide a safe harbor that would exclude a CDPC if (1) that entity does not enter into any new credit default swap (except those that hedge or reduce risk of their pre-existing credit swap portfolios) or materially amend any existing credit default swap and (2) that entity agrees to provide position information to the appropriate regulator relating to its swap portfolio, similar to that required of registered “major swap participants” or “major security-based swap participants”.

Please do not hesitate to contact us if you should have any questions or comments on the above or require any additional detail regarding our proposed regulatory language; the contact details are attached. Thank you for your consideration.

Regards,



Patrick B. Gonzalez
Chief Executive Officer

¹ In the case of AAA Corp., the debt has been issued by its parent guarantor, ACC.

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