

COMMENTS RECEIVED ON THE CONSULTATION REPORT

**Review of Implementation of the IOSCO
Fundamentals of a Code of Conduct for
Credit Rating Agencies**



OICV-IOSCO

**TECHNICAL COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

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1. Fitch Ratings

Fitch Ratings

Thank you for your kind invitation to comment on the Consultation Report, published on February 14, 2007.

Fitch fully supports the efforts made by IOSCO towards a principles-based approach to self-regulation for the rating agency industry. Following the release of the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (“IOSCO Fundamentals”) in December 2004, Fitch was the first global agency, in April 2005, to publish a Code of Conduct (“Fitch’s Code”) which responded to IOSCO’s work. In our view, the Consultation Report is a logical extension of this approach, and is thus a welcome addition to the public debate concerning our sector.

We welcome IOSCO’s timely reminder that the IOSCO Fundamentals are based on a “comply or explain” principle, and that deviations from the IOSCO wording in themselves do not necessarily reflect non-compliance with its core principles. We continue to believe that this is a sensible and practical approach, which respects the existence of different business models and leaves market participants to determine whether a deviation in wording is a material concern to them.

Similarly, we welcome IOSCO’s steps to clarify its intention in a number of areas. In particular, we note that the Consultation Report highlights that the IOSCO Fundamentals were not intended to create additional third party legal rights, and also that IOSCO did not intend to imply that Rating Assessment Services should be regarded as services ancillary to a ratings business. As noted in the Consultation Report, these matters have on occasion been subject to different interpretations between rating agencies, national regulators and market participants and, as such, Fitch believes that these clarifications will be a constructive addition to any future debate.

In addition to these general observations, we have identified two areas where we believe that additional clarification from our side, as a participant in the process, would be helpful. These comments relate to the two specific references that have been made to Fitch with regard to potential variations from the IOSCO fundamentals in the Consultation Report.

Provision 2.12: Fee Discussions (page 11) – IOSCO is correct to note the variation from the language of the IOSCO Fundamentals in the corresponding provision within Fitch’s Code (Section 2.12). This variation is publicly disclosed under Section 5 of Fitch’s Code. However, the wording in the Consultation Report is not entirely correct. Fitch’s position may be more accurately summarised as follows:

The majority of fee discussions are conducted by members of the global marketing team, but Fitch also permits some analysts who are involved in the ratings process to engage in discussions regarding fees and fee arrangements. The first exception

allows senior personnel in the analytical groups, titled Managing Director and above, to discuss fees and fee arrangements with issuers. We do not consider this to conflict with the spirit of the IOSCO Fundamentals because these individuals are considered sufficiently senior to manage any conflict that may arise. The second exception allows that, when specific language skills are required, a native speaker or a country manager, who may not be a member of the global marketing team or hold the title of Managing Director or higher, may conduct such discussions. However, IOSCO's principle of seeking to minimise the potential for conflicts of interest is reflected in the fact that all such latter exceptions for international ratings are discussed in advance by the Managing Director responsible for the affected analytical team, and the Group Managing Director for the global marketing team.

Provision 3.9: Unsolicited Ratings (page 13) – Fitch concurs with IOSCO's identification of two separate and distinct considerations in discussing solicitation status – initiation and participation. In a direct response to the IOSCO Fundamentals, Fitch introduced disclosure on the latter in mid-2005. Therefore, while the Consultation Report is technically correct that participation disclosure is not referenced in the main text of Fitch's Code, section 2.6 of the main text of Fitch's Code does refer readers to our established policies and procedures on the topic.

The relevant policy document "*Rating Initiation & Participation Disclosure*", which extends to participation status on all current Fitch ratings and not just to those initiated by Fitch, was published on June 3, 2005 and is considered an ancillary document to Fitch's Code. It explains how and why Fitch has adopted consistent disclosure of both initiation and participation. It also reaffirms that, in all cases, irrespective of initiation or participation status, all ratings remain subject to a threshold of sufficient information being available to reach an appropriate view on the creditworthiness of an entity.

I hope that these clarifications are helpful to you and that they will be reflected in any subsequent reports that IOSCO produces on this topic.

Yours sincerely,

Sharon Raj

Head of Rating Policy and Regulatory Affairs

Fitch Ratings

2. SIFMA



The Securities Industry and Financial Markets Association (SIFMA) and its Credit Rating Agencies' Working Group¹ are pleased to have been able to assist in the CRA European and international debate to date, both via written submissions² and as organisers of the first ever Rating Industry Day in Paris a year ago.

We are keen to continue to contribute to this debate and thank IOSCO for the opportunity to provide comments on the above-referenced report. We appreciate IOSCO dedicating the necessary resources to ensure that there is a proper follow-up on implementation of its Code by CRAs and congratulate IOSCO for both the quality of its report, and for its pragmatism in using this opportunity to adjust certain Code provisions in light of its findings.

The areas of IOSCO's report which we wish to comment on are (1) the deviations from, or non-implementation of, certain IOSCO Code provisions by CRAs and the explanations provided by CRAs; and (2) the proposed clarifications to the IOSCO Code.

1. Deviations from, or non-implementation of, certain IOSCO Code provisions.

We focus our comments on the CRAs classified by IOSCO as “with strong implementation”, since this category contains the larger CRAs with whom our members mostly interact. There are two main themes that emerge from IOSCO's review of the provisions of the Code from which CRA's have deviated: conflicts of interest and unsolicited ratings. We are not surprised by IOSCO's findings, or by the explanations provided by CRAs to explain deviations. We make the following comments in respect of each theme:

¹ SIFMA (the result of a recent merger between the Bond Market Association and the Securities Industry Association) brings together the shared interests of over 650 securities firms, banks and asset managers. Its mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public confidence in the markets. SIFMA has offices in London, New York and Washington DC, and its sister association, the Asia Securities Industry and Financial Markets Association (ASIFMA), is based in Hong Kong. SIFMA's CRA Working Group consists of European and global heads of Rating Advisory Services functions at investment firms which, between them, cover a significant proportion of new issues of rated debt in the European market. Further information about the Association and its members is available at www.sifma.org

² See responses to IOSCO's proposed Code of Conduct Fundamentals for CRAs ([http://www.bondmarkets.com/assets/files/Response%20to%20IOSCO%20Final%20-%20Clean\(1\).doc](http://www.bondmarkets.com/assets/files/Response%20to%20IOSCO%20Final%20-%20Clean(1).doc)), to CESR's consultation on Possible Measures Concerning CRAs (<http://www.bondmarkets.com/assets/files/cesr%20cp%2030%20nov%2004%20-%20final.pdf>) and to CESR's Questionnaire on the day-to-day application of the IOSCO Code by CRAs (<http://www.bondmarkets.com/assets/files/CESR%20CRA%20Questionnaire%20Response.pdf>)

1.1 Conflicts of interest

This is an area where we have noticed notable improvements. In our experience, all major CRAs now go to great lengths to ensure that adequate separations and firewalls exist between credit analysts and commercial staff. The separation generally goes to more senior management level than used to be the case.

We do not think that any of the explanations provided by CRAs in their code for deviating from the IOSCO Code precise wording are material deviations from the overall standard set by IOSCO. This is with the exception of IOSCO Code provision 2.12 where we remain to be convinced by the arguments put forward for not fully segregating rating analysts from fee discussions, at least as the starting principle (there may be circumstances where this is justified and does not prevent adequate management of possible conflicts).

1.2 Unsolicited ratings (IOSCO Code provision 3.9)

We are still not observing systematic, clear and prominent disclosure and annotation of ratings which are unsolicited and as such based on public information only (without issuer participation) from all the CRAs. This information is valuable given the significant proportion of issuers that are subjected to unsolicited ratings and the fact that the majority of investors rely on such ratings. We are not opposed to this practice *per se*; however, the information ought to appear in a more prominent fashion on all material produced by a CRA in relation to a particular issuer, and be available on a continuous basis (not just at initial press release/first-time rating stage).

2. Proposed clarifications to the IOSCO Code

We provide brief comments on the clarifications that IOSCO proposes to make to the Code.

2.1 General applicability

It will be helpful that IOSCO emphasises the fact that the Code applies to all types of CRAs. This is particularly relevant given that the combination of the US Credit Agency Reform Act and the ECAI process is likely to lead to an increase in CRAs with a publicly recognized status. It will be important for market participants that such agencies have in place a code that is consistent with IOSCO's Code.

2.2 Explanation clarity and implied third party rights

We support IOSCO's proposed clarifying statements.

2.3 Code provision 1.15 (Compliance reporting lines and compensation)

We find IOSCO's proposed clarification very sensible.

2.4 Provision 2.5 (Ancillary vs ratings business)

We warmly welcome IOSCO's clarification that Provision 1.14 of the Code expressly contemplates that "rating assessment services" (RAS) can be an integral part of the analytical process. We agree with IOSCO's sensible suggestion that CRAs define more clearly what they consider constitute "ancillary service", rather than IOSCO attempts to define in the Code what RAS means (which, in any case, goes beyond structured finance and merger transactions and can apply to a broader range of capital markets transactions).

2.5 Provision 3.9 (Unsolicited ratings)

We agree that it would be helpful to clarify the three components of this provision. Equally importantly, this information should be available on a continuous basis, and not just at initial press release or first-time rating.

2.6 Provision 4.1 (Publication of CRA codes)

Encouraging CRAs to publish their codes via the internet is fine. The key is ease of access. For example, having a link to the CRA code on the CRA homepage (as is the case with Fitch) is extremely helpful. We do not think, however, that there is a need to prescribe this method in the IOSCO Code. This IOSCO report is sufficient to make the point and most of the CRAs that have a code do publish it via the internet already.

Yours sincerely,
Bertrand Huet
Executive Director
European Legal & Regulatory Counsel
The Securities Industry & Financial Market Association, London
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3. IMA



The IMA represents the UK-based investment management industry. Our members include independent fund managers, the investment arms of retail and investment banks and life insurers, and the managers of occupational pension schemes. They are responsible for the management of approaching £3 trillion of assets (based in the UK, Europe and elsewhere), including authorised investment funds, institutional funds such as pensions and life funds and a wide range of pooled investment vehicles.

In managing assets for both retail and institutional investors, IMA members are users of the capital markets and users of information provided by/on companies. The IMA supported the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies when it was originally consulted on in November 2004. In addition the IMA urged that securities regulators did not bring CRAs into their regulatory

oversight or supervision. Ratings are merely opinions and there will be a range of opinions in the wider market about any borrower or bond. This leads to healthy markets. There is a real danger of investors being misled as to the quality of a rating if there appears to be some formal regulatory “endorsement” of the CRA.

The IMA appreciates the work which IOSCO has undertaken in reviewing the CRAs’ implementation of the Code. Regarding those smaller CRAs who have not implemented or only partially implemented the Code, the IMA agrees with IOSCO that it is desirable that they should fully adopt it. The IMA would encourage IOSCO to inform those CRAs of the Code’s existence and to aim to provide local language translations.

In addition, the IMA agrees with IOSCO’s identification of areas for clarification and would support any necessary amendments to the Code.

Should you have any queries please do not hesitate to contact me.

Yours sincerely

Liz Rae
Senior Adviser – Investment and Markets

4. DBRS

DBRS³ is pleased that the IOSCO Technical Committee considers DBRS’s IOSCO CRA Code to have strong implementation.

For DBRS, the adoption and publication of an IOSCO CRA Code⁴ provided an opportunity to summarize the range of policies, procedures, and internal controls that DBRS has implemented over the years to ensure the objectivity and integrity of its ratings and the transparency of its global operations.

DBRS endorses widespread public adoption of an IOSCO CRA Code by rating agencies of all sizes and business models and we suggest that this is achievable goal given the principles based comply or explain approach. The IOSCO CRA Code is a self-regulatory framework that provides transparency to market participants about a rating agency’s quality, integrity and independence. Having all rating agency participants ascribe to it helps to promote the safety and soundness of the industry and also helps to strengthen competitiveness within the industry.

DBRS reviews its policies, procedures and internal controls on an ongoing basis and accordingly makes adjustments to ensure it continues to meet regulatory and legal

³ DBRS operates outside Canada through various affiliated companies. Please note that effective January 22, 2007, "Dominion Bond Rating Service Limited" changed its name to "DBRS Limited", and "Dominion Bond Rating Service, Inc." changed its name to "DBRS, Inc.". There was no name change to DBRS (Europe) Limited.

⁴ The DBRS Code of Conduct, published on February 2006 and the Report on the DBRS Code of Conduct, published on May 2006 can be found on dbrs.com.

requirements and global business needs. In the near future, DBRS will be publishing a revised IOSCO CRA Code to clarify certain policy areas cited in this Consultation Report as well as CESR's Report to the European Commission on the compliance of Credit Rating Agencies with the IOSCO Code. Clarifications will include Provisions 2.12 regarding fee discussions, 2.13 regarding Grandfathered Securities and 3.9 regarding unsolicited ratings (also referred to as Ratings Based on Public Information) among other areas.

DBRS agrees that additional clarity is needed for each of Provisions 1.1.5 (to clarify that the compliance function is not directly influenced/dependent on clients/issuers) and 2.5 (what is meant by ancillary services).

DBRS is pleased to have the opportunity to comment on this Consultation Report. Should you wish to further discuss our comments, please do not hesitate to contact me or Kent Wideman.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'M. Keogh'.

Mary Keogh
Managing Director, Policy & Regulatory Affairs

A handwritten signature in blue ink, appearing to read 'K. Wideman'.

Kent Wideman
Group Managing Director, Policy & Rating Committee

5. Rating Evidence GmbH

Thank you for the opportunity to comment on the consultation report of February 2007, the review of implementation of the IOSCO fundamentals of a code of conduct for credit rating agencies.

- **Credit rating agencies:** In comparison to the “several dozen different CRAs throughout the world” quoted in the IOSCO report, RATING EVIDENCE GmbH currently counts many more independent organizations providing credit assessments in the form of credit ratings in more than 110 countries of the world [see BÜSCHGEN/EVERLING].
- **Other rating agencies:** Assekurata Assekuranz Rating-Agentur GmbH does not fit to the other rating agencies mentioned in the IOSCO report since their ratings are not mere credit assessments [see ACHLEITNER/EVERLING (1)].
- **Rating advisors:** The activities of rating advisors may not be confused with those of rating agencies. When I cooperated with Cantwell & Company in 1998, the consultancy was (and probably still is) clearly positioned as a ratings advisory firm and not as a rating agency [see ACHLEITNER/EVERLING (2)].

The IOSCO report provides the wrong impression that there are still a lot of rating agencies without any published code of conduct (“CRAs with no implementation”). The US rating agencies followed the IOSCO initiative, while other rating agencies jointly agreed upon and implemented their code of conducts years before any IOSCO code was published.

- **Rating Cert e. V.:** In 1999, the association of rating experts in Germany, now Bundesverband der Ratinganalysten und Ratingadvisor e. V., published its code of conduct called “Grundsätze des Unternehmensratings” which was adopted by several rating agencies [see EVERLING and ACHLEITNER/EVERLING].
- **Bundesverband der Ratinganalysten und Ratingadvisor e. V. (BdRA):** It is one of the elementary aims and principles of the Federal Association of Rating Analysts and Rating Advisors that all members agree to and adhere to common ethical and quality standards as published by the association on its website. Again, these rigorous standards were introduced well in advance of the IOSCO code [see www.bdra.de].
- **Deutsche Vereinigung für Finanzanalyse und Asset Management e. V. (DVFA):** In 2000, the Society of Investment Professionals in Germany established the Rating Standards Committee, publishing in 2001 DVFA-Rating Standards to assure transparency for company ratings, later also validation standards, supported by German rating agencies [both also in English language, see www.dvfa.de].

In 2006, the **DIN Deutsches Institut für Normung e. V.** initiated a project in the **International Organization for Standardization (ISO)** to specify requirements on rating services including rating processes and rating methods [see MÜHLBAUER]. This project could lead to a clarification of certain aspects of the relationships between issuers and rating agencies as well as between investors and rating agencies [see ACHLEITNER/EVERLING (4)].

We may draw your attention also to our answers to the CESR questionnaire on the day-to-day application of the IOSCO Code (copy enclosed),

Yours sincerely,
RATING EVIDENCE GmbH
Dr. Oliver Everling CEO

Friday, August 11, 2006

Dear Ms Bonde,

RATING EVIDENCE GmbH is a German company of Everling Advisory Services (www.everling.de), established in 1998. RATING EVIDENCE GmbH (www.rating-evidence.com) functions as an evidence center of given ratings for banks, insurance companies, corporates or any other legal entity requiring a credit rating. I participated in your hearing on January 14, 2005, in Paris. Please let me answer just to some of your questions.

1. Do you know of cases where the methodologies used by CRAs were not consistently applied or where changes of methodologies were not clearly explained and disclosed?

We find from time to time cases in which we could discuss the consistency of rating methodologies applied. Especially Moody's and Standard & Poor's frequently refrain from explaining and disclosing every aspect of their methodological changes and leave it open to discussion how they came to their conclusions. Nevertheless, it should be taken into account that the art of rating is subject to a continuing evolution, rating criteria are sub-ject to frequent changes since circumstances and applicabilities are changing.

2. Do you know of ratings based on inaccurate information or issued without the credit rating agency having taken into account all relevant information?

Since the rating process is not completely disclosed, some dissatisfaction is inevitable.

3.1 Do you consider that the CRAs devote sufficient resources to assign high quality credit ratings?

3.2 Do you consider that the CRAs devote sufficient resources to assign high quality credit ratings of structured finance instruments and to monitor them on an on going basis?

In general, yes, the leading rating agencies devote sufficient resources to assign high quality ratings, e. g., DBRS analysts work within specific industries and products in the Corporate and Structured Finance business groups, respectively. Each entity rated by DBRS is normally covered directly by two analysts (a lead and back-up), who work together on the rating, attend meetings with the issuer's senior management, and make a recommendation to the Rating Committee with regards to a rating action for the entity and are generally familiar with, and responsible for, all current and recent events for that issuer.

We know a lot of analysts with credentials, expertise, and experience for particular industry sectors and product groups. Nevertheless, only a very few analysts undergo training to absorb the rating agencies' rating philosophies and approaches at one of the universities offering rating education. Analysts are given specific accountabilities within an industry team without any prior education at an independent academy.

Usually the analysts receive only on-the-job and in-house training on a variety of ratings, analytical, accounting, and governance topics provided by experienced senior management. Although in-house training and professional continuing education programs are supplemented with attendance at conferences, speaking engagements, and a few external courses, it would increase the confidence in ratings if rating analysts' education would be more structured like in other professions. In Germany, the Bundesverband der Ratinganalysten und Ratingadvisor (BdRA) strives for a common title "Certified Rating Analyst" for those rating analysts, who have proven to an external board of examiners that they understood analytical as well as ethical aspects of their work.

4. Do you consider that the period of time during which the rating decisions, the rating reports and the updates are publicly available is sufficient?

Since the publication of reports etc. in the internet is no longer a cost factor, all research should be made public continuously, even when changes in the methodologies have occurred. It would make it much easier to understand the evolution of rating criteria and processes. All of the major rating agencies publish their rating decisions, reports and updates on their websites generally on a timely basis.

5. It is always clear to you which are the critical elements underlying the rating decision (including its updates)?

Each rating report and industry study provides the criteria for rating decisions and an analysis including the strengths, challenges, and key characteristics of the Issuer. This is true for DBRS, Fitch Ratings and to a lesser extent for Moody's and Standard & Poor's. There are still ratings to which no explanation is available.

6. Do you think that the ongoing surveillance of CRAs on ratings, which can result in a rating action, is effective and timely?

In general, the rating agencies maintain ongoing surveillance of the entities that they rate and, from our experience, a rating is fully reviewed and a meeting arranged with senior management on an annual basis. Nevertheless, the rating agencies expect the co-operation of the issuer in keeping them up to date with any significant developments.

We came across a case in which a team of four rating analysts at Moody's was laid-off. There was no public disclosure why and when the team had left Moody's, even later on there was no press release explaining in any form the organizational changes at the rating agency. After the lay-off, ratings under the responsibility of those laid-off analysts were still published, although nobody visibly took care of the ratings. Since it is not their policy to disclose such disorders it is hard to provide evidence for such offences against the ongoing surveillance on ratings.

7. Have you ever experienced (or heard about) situations where the CRA or its employees have given any assurance or guarantee of a particular rating prior to a rating assessment?

No.

8.1 Do you consider that the CRAs disclose clearly in the rating decision whether
a. the rating was not initiated at the issuers request?
b. the issuer has not participated in the rating process?

8.2 Is the abovementioned disclosure valuable for you?

8.3 Do you know of cases where ratings of the type mentioned above (a and b) had a lower degree of quality than others?

Since rating agencies are not only serving issuer interests, but possibly also interests of many other parties, ratings could rightfully be solicited directly or indirectly by other clients than issuers. Unsolicited ratings might be based only on public information, but also solicited ratings might be based on public information only. Therefore, as BdRA pointed out in its paper dated January 28, 2005, it does not see questions arise such as the need to disclose this fact.

We agree with BdRA's support for and reservations against the public interest to know who takes the initiative. By defining solicited ratings as those where the initiative has been taken by the issuer, the designation "solicited rating" could become a mere marketing instrument of the leading rating agencies who are known to limit their activities in Europe more or less to issuers in the capital markets. The term unsolicited rating does not equate automatically to a rating produced without co-operation from the issuer. There is indeed a spectrum of possibilities ranging from no contact between the CRA and the issuer and full co-operation.

The concept of the initiative is no more appropriate than of the payment. Not only that issuers might end up paying for ratings that they did not solicit in the first place, but there is also no clear border line between "solicited" and "unsolicited" ratings, since rating mandates could be given in any legal form (oral, in writing). Some rating services indicate if their ratings are unsolicited ratings; nevertheless, in some

cases, issuers may provide limited information to the rating agency in question and the agency still considers those ratings to be unsolicited ratings.

We believe the quality of ratings is generally the same whether the issuer initiated the request and/or did not participate in the rating process noting that publicly available financial and other information continues to improve. Analysts generally have the expertise to understand and compare issuers across industries to derive appropriate relative ratings. Participation by management in the ratings process in terms of advising analysts of significant company changes with some additional color of the reason for the change helps rating agencies be more timely in publishing changes in ratings where appropriate.

9. Have you ever experienced (or heard about) situations where the CRA has denied the issuer the opportunity to clarify any likely factual misperceptions or other matters that the CRA should be aware of prior to issuing or revising the rating?

No.

10. Are you aware of cases where the rating decision was influenced by pressures from the issuers or other parties?

Yes, of course. To give an example: Moody's Investors Service announced on June 3, 2002, that it was withdrawing Iran's sovereign ratings because of U.S. government concerns that such ratings could be inconsistent with U.S. sanctions on Iran. Moody's has responded to the U.S. government's concerns and, if those concerns can be satisfied, would anticipate issuing updated ratings. This policy holds still today.

11.1 Do you consider that CRAs have put in place adequate separations and firewalls between credit rating analysts and staff involved in providing other businesses (such as rating advisory, consulting, credit assessment, research)?

11.2 Have you ever been in contact with credit rating analysts for other services than the one they provide within the context of credit rating?

The rating agencies officially do not engage in ancillary advisory or consulting service in the context of providing advice to management on how to structure a transaction or deal to achieve a particular rating. This is different than structured finance business for example responding to structures proposed by management with possible ratings.

12. As an issuer, have you ever negotiated the fees of the rating service with analysts involved in the rating process?

No comment, since we are not an issuer.

13. Have you experienced any situation where the rating disclosure was not done in a timely manner?

No.

14. Have you encountered any problems in relation to the use of confidential information in your day-to-day business with CRAs?

No.

15. Do you know of cases where the credit rating agencies are not applying the provisions of their own codes of conduct?

Yes, we acknowledge offences which were already disclosed by some rating agencies themselves, see your document of July 6, 2006.

16. Are there any other comments you would like to make?

We notice an increasing reluctance especially on the part of Moody's and Standard & Poor's to contribute to the local discussion of their rating policies and procedures. In comparison to the other institutions and in comparison with their behaviour in North America, they remarkably refrain from contributions to books and magazines on credit ratings, especially in other languages but English. This is notable since an invitation to contribute to a book or magazine means frequently to be invited to opinion on a specific problem or to answer a specific questions.

For the time being and considering the current situation of the rating market, we disagree with a government imposed regulatory regime (with 30 possibly disparate country approaches), and prefer the current market-based oversight model based on the IOSCO Code.

Yours sincerely,
RATING EVIDENCE GmbH
Dr. Oliver Everling
CEO

Friday, August 11, 2006

6. Bundesverband der Ratinganalysten und Ratingadvisor e.V.

BdRA

Bundesverband der
Ratinganalysten und
Ratingadvisor e.V.

We studied with interest your consultation report of February 2007. Please let us add to your review of implementation of the IOSCO fundamentals of a code of conduct for credit rating agencies.

Bundesverband der Ratinganalysten und Ratingadvisor e.V. (BdRA), formerly Rating Cert e.V., is the Federal Association of Rating Analysts and Rating Advisors in Germany, gathering analysts of Cofacrating, Euler Hermes Rating, Prof. Dr. Schneck Rating, URA Unternehmens Ratingagentur and others.

All members are bound to adhere to the code of conduct for company ratings (Grundsätze des Unternehmensratings), which was drafted by a group of leading rating experts of Germany in 1999. Therefore our code was elaborated and came into force years before any IOSCO Code was published.

Our code of conduct is and was always freely available on our website (www.bdra.de resp. www.ratingcert.de). The fact that German rating agencies follow this code of conduct was published in numerous newsletters, newspapers, magazines, books and on various websites (e.g. www.everling-newsletter.de).

Yours sincerely,
Bundesverband der Ratinganalysten und Ratingadvisor e.V.
Dieter Pape
Chairman



Association of British Insurers

7. Association of British Insurers

Comment on the Consultation Report on the Review of Implementation of the IOSCO Fundamentals of a Code of Conduct for Credit Rating Agencies. February 2007

We welcome the opportunity to comment on the Consultation Report. We support IOSCO's objective for the Code as a means of encouraging competition in Credit Rating Agency (CRA) sector.

ABI members manage assets, an account of the business of their life and general insurance interests, of the order of £1,200bn (€1,800bn) as well as the assets of third party clients. Ratings impact on a significant proportion of these funds under management.

Ratings have become integral to the operation of the global capital markets. ABI members are of the view that rating remains an art, not a science, and reflects an opinion. For these members rating is only one factor when undertaking a credit assessment or investment. CRAs are valued as providers of information and where they act in a policing role towards borrowers.

We have followed closely the debate on CRA oversight. We supported the introduction of the IOSCO Code of Conduct. We support the CESR position, given in its Advice, not to regulate CRAs at an EU level and to review the implementation of the IOSCO Code.

We welcome the survey approach adopted in the IOSCO review in providing greater transparency on the operational aspects of CRAs. As issuers our members note with interest commentary on Provision 3.9 (unsolicited ratings, issuer participation, and rating initiation pp12-13). We strongly support improved clarification in this area (see below).

We would comment, in respect of the conclusion of the Review, our agreement with the statement that “iron-clad integrity is a necessary pre-requisite for widespread acceptance of a CRAs ratings.” We note with interest the general conclusion of a UK project undertaken by the University of Paisley for the Institute of Chartered Accountants in Scotland, to be published later this year, that “independence is a sine qua non of CRA work”. This supports the Review conclusion that “it does not benefit the CRA industry for market participants to believe that CRAs have two tiers” i.e. large and medium-sized firms with strong implementation and smaller firms with weaker implementation of the Code. We therefore support the view that there should be a better publication and explanation of the Code and encouragement of its adoption by smaller CRAs.

We support the commentary regarding potential areas for clarification as regards both the general applicability of the Code to all CRAs irrespective of business model, clarity of explanation and implied third party rights. We are strong supporters of operational flexibility tempered by the use of the comply or explain mechanism. We also support the comments in respect of clarification of Code Provisions 1.15, 2.5, 4.1 and particularly 3.9.

We support IOSCO’s intention to continue to monitor the Code and new market developments that may require its revision.

8. Rating and Investment Information, Inc.

格付投資情報センター



Rating and Investment Information, Inc.

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May 9, 2007

Via Electronic Mail

Ms. Tillie Rijk
IOSCO General Secretariat
C/ Oquendo 12
28006 Madrid
Spain

Re: Comment on the consultation Report on Implementation of the IOSCO CRA Code

Dear Ms. Rijk,

Rating and Investment Information, Inc. ("R&I") appreciates the opportunity to comment on the Consultation Report on Implementation of IOSCO CRA Code and commends the Chairman's Task Force for its first-time review of the operational implementation of the Code. R&I hopes that the following comments will be of assistance to the project of the Task Force.

Potential areas for clarification of the IOSCO CRA Code

Provision 1.15

R&I supports the clarification of the meaning to ensure that the compensation and reporting lines of the person in charge of the CRA's compliance program is not dependent on or influenced by any issuer, client, or group of issuers or clients, as this would adequately reflect the importance of the compliance function.

Provision 3.9

R&I believes that it may be valuable for IOSCO to further define the concepts of solicited/unsolicited ratings and the issuer participation for gaining a consensus among the concerned parties. The subject of the disclosure should be later discussed in accordance with the above mentioned consensus.

As a reminder, please spell out our company name on the list of CRAs on Page 7. For further information or clarification regarding the comment, please feel free to contact myself at yharada@r-i.co.jp or Katsuyuki Ushiro at ushiro@r-i.co.jp.

Sincerely,

A handwritten signature in blue ink, appearing to read "Y. Harada", is written over a horizontal line.

Yasuhiro Harada
Chairman & Co-CEO
Rating and Investment Information, Inc. (R&I)

9. Creditreform

Comment from Creditreform Rating Agency to the implementation of the IOSCO Fundamentals Code of Conduct for Credit Agencies

1. Short Introduction of the Creditreform Rating Agency:

Registered Office:	Neuss, Germany
Legal form:	Incorporated Company
Founded:	2000
Management Board:	Dr. Michael Munsch
Staff members:	90
Focus:	Ratings of Companies in Europe
Background:	Creditreform is the market leader in Business Information/ Business Reports in Europe with a turnover of 500 Mio € The 125 years of expertise in this field of Business information gives a strong background to develop Rating business. Our quantitative financial information is part of the biggest database concerning European firms.

2. The Creditreform Rating Agency professes itself to the regulations of the IOSCO Code of Conduct and has voluntarily developed a Code of Conduct, based on the principles of the IOSCO-Code of Conduct.
3. Already before IOSCO has published the general Code of Conduct in 2004, the Creditreform Rating Agency adhered the national Standards of the German association for financial analysis and asset management (www.dvfa.de). These national standards agree to a large extent with the principles of the IOSCO standards, however contain numerous regulations, which go beyond the minimum requirements of IOSCO.
4. In Order to get experience in utilization with the principles of the Code of Conduct, the code was used so far only within the organisation. A first publication was made this month on www.creditreform-rating.de.

5. The content of the IOSCO Code of Conduct was assumed nearly completely. In some points, the IOSCO provisions were amended with additional aspects. In the case of deviations these were justified. In cases, where the Code deviates from the IOSCO provisions, objectives - contained in the IOSCO provisions – are achieved.
6. The Code of Conduct of the Creditreform Rating Agency deviates substantially only in point 1.15. from the IOSCO provisions. Thereafter, the Compliance-Officer should be independent of the CRA's rating operations. Due to the young history of the Creditreform Rating Agency and the reached size of the agency, all staff members are involved into the rating process. For this reason, the assignment was delegated to the Management Board. With the further growth of the agency it is intended to create a new position for a Compliance-Officer.
7. The Creditreform Rating Agency reserves itself the right, to develop the Code continuously and to adjust the Code to the internal circumstances as well as to the requirements of the capital markets and the common legal system. The modifications in the Code will promptly be published on www.creditreform-rating.de.
8. The Creditreform Rating Agency basically approves the standardisation efforts of IOSCO concerning the principles of behaviour of credit rating agencies in a voluntarily way without any state control.

[Also sent in but not included in this overview: Verhaltenskodex der Creditreform Rating AG entsprechend dem Code of Conduct der International Organisation of Securities Commissions (IOSCO) – [www. Creditreform-rating.de](http://www.Creditreform-rating.de)]



10. German Insurance Association

Summary

The German Insurance Association (GDV) considers globally recognized binding minimum standards for the business of CRAs as essential if both the quality of ratings and the efficiency of the rating process are to be maintained. Therefore, we fully support the regulatory framework created by the publication of the IOSCO Code of Conduct Fundamentals for CRAs in 2004, and we very much welcome IOSCO's current efforts to review the Code's implementation by CRAs with a view to identifying the potential need for a modification of some of the provisions of the Code or other further progress in this field.

In our view, the IOSCO Code can be regarded as a major step forward towards closing the regulatory gap which had previously existed in the rating market. Though it seems too early for a comprehensive judgement of the actual success of the Code in the market – whether it will be globally adhered to by CRAs and whether it will prove sufficient to ease all prior concerns –, we believe that the experience so far has been promising. In the German insurance market, we have observed a significant improvement in CRAs' business conduct, e.g. with respect to transparency of rating methodology and interaction with market participants. However, one limitation of the Code which has become apparent already is that in some instances the Code provisions offer general guidelines only and that the wording is sometimes ambiguous. Hence, there is significant scope of interpretation and a need for clarification. For the German insurance industry, a major point of concern in this context is that the disclosure of the type of rating (initiation and participation status) by the CRAs so far cannot be regarded as sufficient or in line with the objectives of the Code.

In order to ensure that the objectives of the Code can be fully achieved, some clarifications in the text of the Code might be necessary in order to provide CRAs and market participants with further guidance and to minimize potential disagreement over the interpretation of the Code. In addition, beside a full review process every few years, it might be desirable that IOSCO monitors developments with respect to the Code on a more frequent basis. In cases of disagreement over the interpretation of the Code, IOSCO or other supervisory authorities should assume the role of arbitration body.

On behalf of the German insurance industry, we would like to thank the Technical Committee of the IOSCO for the opportunity to submit our comments on the consultation report "Review of Implementation of the IOSCO Fundamentals of a Code of Conduct for Credit Rating Agencies" published on 14th February 2007. The German Insurance

Association (GDV) considers the implementation of globally recognised binding minimum standards for the business of CRAs as essential if both the quality of credit ratings and the efficiency of the rating process are to be maintained. Therefore, we fully support the new regulatory framework which was created by the publication of the IOSCO Code of Conduct Fundamentals for CRAs in 2004, and we very much welcome IOSCO's current efforts to review the Code's implementation by CRAs with a view to identifying the potential need for a modification of some of the provisions of the Code or other further progress in this field.

Relevance of ratings for the German insurance industry

As the trade association of the German insurance industry with almost universal membership, the GDV represents 443 insurance companies (life, health, property/casualty and reinsurance) with total assets of some EUR 1,190 bn. Insurance companies rely on external ratings for several reasons. In their role as institutional investors, insurance companies make extensive use of ratings provided by CRAs in managing their asset portfolios. However, insurers are also confronted with the practices of CRAs in their role as issuers in the financial markets. Moreover, insurer financial strength ratings have an increasing impact on an insurer's standing in the market for insurance coverage. When contracting with reinsurance companies, direct insurers will typically look at reinsurers' financial strength ratings. In addition, a growing number of intermediaries or even policyholders also draw on ratings when advising on or taking out primary insurance, especially in the field of life insurance. Finally, ratings are increasingly referred to for regulatory purposes, for example, as a proxy of asset risk in stress testing. For all these reasons, the insurance industry depends crucially on high standards in the rating process and on the reliability and quality of the ratings issued by CRAs.

Even though, in recent years, specific incidents have provided examples of disagreement between insurance companies or the German insurance industry and individual CRAs over the methods and procedures applied and the standards used in the publication of rating assessments, we would like to emphasise that, in the view of our industry, even prior to the publication of the IOSCO Code, the quality of rating assessments and the working relationship with CRAs in the German insurance market could, in general, be characterised as largely satisfactory. However, in view of more and more incidents – exception to this general observation – it had by 2004 become clear that some regulatory framework was needed if a sufficiently high quality both of rating assessments and the rating process were to be maintained. In our view, therefore, prior to the publication of the IOSCO Code, there was an urgent need for the creation of some globally recognised binding minimum standards for the business of CRAs.

Assessment of the current regulatory framework

In our view, the IOSCO Code can be regarded as a major step forward towards closing the regulatory gap which had previously existed in the market for credit ratings. With the introduction of globally binding minimum standards for CRAs with respect to

transparency of the rating methodology, disclosure of the type of rating, dealing with conflicts of interest, quality and integrity of the rating process, and CRAs' interaction with rated entities, the Code provides an adequate framework for CRAs' activities. Since regulators, in addition to drafting and publishing a voluntary code of conduct, have made it amply clear that further measures were to be expected should the current IOSCO framework prove insufficient, and since any unjustified deviations from, let alone an open neglect of, the provisions of the IOSCO Code would have a strong adverse effect on reputation for the respective CRA, incentives for CRAs to implement the provisions of the Code are substantial. In addition, at least within the European Union, the monitoring and reporting function which has been assigned to CESR by the European Commission with respect to CRAs' adherence to the IOSCO standards and the voluntary framework of co-operation between CESR and CRAs on this subject which has subsequently been established have promoted further CRAs' compliance with the IOSCO Code within the European Union and have enhanced its effectiveness.

Impact of the IOSCO Code: General observations

With the creation of the IOSCO Code, for the first time rated entities and users of ratings could rely on certain standards which they could refer to whenever disagreement with a CRA over the CRA's business conduct occurred. Though it seems still too early for a comprehensive judgement of the actual success of the Code in the markets, we believe that the experience with the Code so far has been promising. In the German insurance market, it is our general impression that the publication of the IOSCO Code – supported by the increased level of attention paid by regulators and supervisors world-wide to CRAs' activities – has led to substantial additional efforts by CRAs to improve on their business conduct. We observe considerable efforts by CRAs to enhance their internal quality standards and the transparency of methodologies and proceedings. All major CRAs seem to have incorporated the IOSCO Code into their own codes of conduct by now, with only a limited number of deviations from the IOSCO provisions. We also experience an increased willingness by CRAs to enter into dialogue with the German insurance industry both with respect to rating methodology and with respect to procedures and practices. A great deal of additional information on procedures and practices is now publicly available, and public consultations on the models and methodologies used by the CRAs have by now become far more common compared to the period prior to the publication of the IOSCO Code.

The effectiveness of the new regulatory framework was also highlighted in an interaction between the German insurance industry and Fitch with respect to the introduction of a new type of unsolicited financial strength ratings for a large number of German insurers. In December 2004, shortly before the publication of the IOSCO Code, with reference to the Code provisions, the GDV called on Fitch to amend its plans for the imminent assignment of quantitative IFS-ratings (so-called Q-ratings) claiming that Fitch's approach was in clear violation of several of the IOSCO Code provisions. Fitch responded to the GDV's intervention, and major improvements could be achieved, in particular, a 3-month delay in the publication of the Q-ratings, and, in the meantime, transparency of and a public consultation on the rating methodology, improvements in

the interaction with rated entities, including the establishment of an appeal process, as well as an unambiguous communication by Fitch on the special character of the Q-ratings upon publication.⁵ The effectiveness of the new IOSCO Code became also apparent in a second interaction between the GDV and Fitch in the course of which the GDV made use of the new possibility provided by the IOSCO Code to submit a formal complaint to the respective CRA (see in more detail below).

Even though this overall assessment of the impact of the IOSCO Code in the German insurance market is extremely positive and even though we do not know of any single case of an open neglect of the Code provisions by any single CRA, some limitations of the IOSCO Code have, in our view, by now also become apparent already. Many provisions of the IOSCO Code contain general guidelines only, for example, with respect to transparency of methodology or prior notification of rated entities. In addition, the wording is often ambiguous (e.g., certain provisions apply “where feasible and appropriate” only). Therefore, there is ample scope of interpretation, and it is our experience that in some cases the CRAs’ interpretation of the Code’s wording seems to contradict the original objectives of the Code. Moreover, cases of disagreement between market participants and rating agencies over the interpretation of the Code – as is partly the case in the second dispute between the GDV and Fitch, which is referred to in more detail below – cannot always be resolved as there is no arbitration mechanism available. To the extent that the provisions of the IOSCO Code have proved insufficient or not clear enough, an amendment of some stipulations or a review of the wording of some of the provisions of the Code might be necessary. Especially, we fully support the assessment contained in the consultation report that there is a need to clarify the provision on disclosure of type of rating (see in more detail below).

Beyond a review and an amendment of the IOSCO Code, further regulatory measures would, in our view, only seem inevitable if – in an extreme case – the rules and procedures of the Code were openly or intentionally neglected by major CRAs. However, it is our experience that this is not the case so far. In view of this experience, the supervisory architecture that has been established for CRAs so far by means of the publication of the IOSCO Code and the establishment of measures to review its implementation seems largely sufficient, however, with one exception. At present, and even after a careful review of the IOSCO Code of Conduct Fundamentals’ text, there is no arbitration mechanism to resolve with authority potential disputes over the interpretation of the Code. In our view, in order to enhance further CRAs’ adherence to the Code in the sense that ambiguities cannot be exploited by CRAs or that CRAs cannot claim that they comply while in fact their business conduct is in contrast to the Code, some arbitration procedure should therefore be established, possibly by means of charging the same body that has drafted the Code with resolving arbitration appeals or by means of assigning this task explicitly to supervisory authorities in the respective countries or regions.

⁵ For further details on this interaction between the GDV and Fitch see the GDV’s letter of complaint of December 2004 and the GDV’s comment on Fitch’s Q-rating Exposure Draft, both available on the GDV’s Web site (www.gdv.de/fitch-q-rating). Information on the Q-ratings and Fitch’s consultation with the market is available on Fitch’s Web site (www.fitchratings.com).

Case Study: The GDV's formal complaint to Fitch⁶

The limitations of the current framework have become evident in a recent dispute between the GDV and Fitch, even though the results of this dispute can also be interpreted to a large extent as an additional piece of evidence for the positive impact of the IOSCO Code. For several years, even beside the issue of the Q-ratings, a large number of issues of concern with respect to Fitch's activities in the German insurance market had been discussed between the GDV and Fitch. Since it had not been possible to achieve sufficient improvement in Fitch's business conduct in the course of this ongoing informal dialogue, the GDV decided to submit a formal complaint with reference to the IOSCO Code provisions to Fitch, which was finally submitted in April 2006. The formal complaint focused on the poor quality of market research published by Fitch on German life insurers, including the handling of market feedback on this research, insufficient disclosure of unsolicited ratings, and Fitch's policies of prior notification of rated entities. In the complaint letter, the GDV referred both to general policies adhered to by Fitch and to a number of instances in which, in the view of the German insurance industry, Fitch did not (fully) comply with the IOSCO provisions. The complaint letter was supported by a comprehensive documentation of the violations of the IOSCO Code by Fitch referred to by the GDV.

It was our observation that, after the submission of the complaint, Fitch took the issue very seriously. Fitch engaged in a thorough internal investigation on all the issues raised by the GDV. As a result of this investigation Fitch had to concede in its response to the GDV in June 2006 that quite a number of shortcomings and errors had occurred in the course of its activities in the German insurance market. For example, Fitch admitted that there had been systematic miscalculations in its market research on the German life insurance industry, that there had been weaknesses in the handling of market feedback, that several of Fitch's own policies (e.g., on disclosure of ratings) had not been fully implemented in the German market, and that Fitch's communication with rated entities in the German insurance market had to be improved in the case of unsolicited ratings. Fitch simultaneously announced corrective action which had already been initiated to remedy the acknowledged shortcomings, and, as a consequence of the GDV's complaint, Fitch's business conduct in the German insurance market has improved substantially since then. In this regard, both the impact of the IOSCO Code and the effectiveness of the new complaint mechanism provided by the IOSCO Code can be viewed as extremely promising.

On the other hand, however, in its letter of response Fitch denied that its general policies on disclosure of unsolicited ratings or on prior notification of rated entities violated the IOSCO Code provisions as it had been claimed by the GDV in its letter of complaint. According to Fitch's own interpretation of the relevant IOSCO Code provisions, which differs markedly from that of the GDV, Fitch's approach fully

⁶ 2 For more details also see the GDV's formal complaint and Fitch's letter of response which are available on the GDV's Web site (www.gdv.de/fitch-gdv-complaint).

complies with the IOSCO rules. Therefore, with respect to these two issues – disclosure of unsolicited ratings and prior notification – Fitch was not willing to bring about the changes to its policies asked for by the GDV. Both issues could not be resolved, partly due to the scope of interpretation in the text of the Code and partly due to the lack of any form of arbitration procedure over the interpretation of the Code.

Since the issue of compliance with the IOSCO’s stipulations on disclosure of the type of rating is also identified in the consultation report as the “single most prominent trend” where CRAs currently deviate from Code provisions, and the need for clarification of the relevant provision 3.9 of the Code of Conduct Fundamentals is mentioned in the report, we would like to provide further evidence on this subject by going in more detail into the disagreement between the GDV and Fitch over the interpretation of this provision.

Disclosure of type of rating (Provision 3.9 of the Code)

For the German insurance industry, the issue of full disclosure of the type of rating is of particularly high importance since unsolicited and mostly non-participating ratings are widespread in the German insurance market. Indeed, for German insurers, the number of unsolicited ratings even exceeds the number of solicited, fully interactive ratings. Full disclosure on initiation and participation status of a rating is, therefore, from the GDV’s point of view, essential in order to avoid distortions both in the financial markets and in the market for ratings. Even though unsolicited or nonparticipating ratings can play a useful role in the financial markets and help investors in their investment decisions, the different types of ratings have to be clearly distinguished as actual ratings assigned to a rated entity will differ markedly depending on the type of rating. For example, there seems to be a bias towards a more prudent assessment and hence lower ratings in the case of unsolicited ratings due to the generally lower level of information incorporated since unsolicited ratings are usually prepared without access to (in-depth) non-public information.

We believe that users of ratings should be afforded the possibility to take the type of rating into account whenever they rely on a rating since otherwise potential biases in the rating assessment due to the different type of rating will spill over into distortions in the investment decisions of market participants. In our view, a clear and unequivocal distinction between different types of ratings with respect to their initiation and participation status as required by the IOSCO rules must constitute an essential part of the CRAs’ communication efforts in order to minimize misleading signals for the markets. Moreover, if unsolicited / non-participating and hence – at least regarding their informational content – inferior ratings are displayed by CRAs to investors without making the difference from solicited / participating ratings fully transparent, issuers might feel exposed to an undue pressure with respect to the decision on entering into a solicited and fully interactive rating process in order to avoid disadvantages in the market. This observation, which is usually denied by CRAs, provides an additional argument in favour of full transparency of the type of rating at any time.

Over the last few years, CRAs have undoubtedly improved their disclosure of the type of rating so that today more information on the initiation and participation status of ratings is publicly available. However, we believe that disclosure, in many cases, can still not be regarded as sufficient. Moreover, the question of disclosure of the type of rating has, in our experience, proved to be one of the most controversial issues associated with the implementation of the IOSCO Code. It is our interpretation of the Code that CRAs must disclose the type of a rating at any time whenever a rating is published or quoted in public, for example, in rating reports, press releases, in tables displaying several ratings, in market reports or in all other publications by the CRAs so that this information is readily available to any user of that rating. The type of rating should be immediately transparent, for example, in the form of a subscript or a subscript and a footnote added to the rating. In the German insurance market, several examples of full disclosure of the type of rating can be found, e.g., the “pi” notation applied by Standard & Poor’s in order to disclose unsolicited insurer financial strength ratings or the subscript “q” used by Fitch in order to mark its Q-ratings, accompanied by a footnote to explain the special character of this type of rating. However, there are also examples that users of ratings have to go to some length in order to have access to the information on the type of a specific rating, or that the information is not made available to users of ratings at all.

The issue of disclosure of the type of rating was one of the major controversies in the above-mentioned dispute between the GDV and Fitch. A resolution of the disagreement on this issue has proved impossible so far. Fitch’s policy is to only disclose the information required by the IOSCO Code at the time of the first assignment or the revision of a rating as part of the initial press release which for most ratings is only publicly available for a short time on Fitch’s Web site. After that period, Fitch would continue to publish the respective rating, however, without any further reference to the specific type of rating. Instead, a standard reference text published alongside with ratings for German insurers informs the users of those ratings about the possibility to contact a so-called ratings desk which is part of Fitch’s operation in order to inquire about the initiation or participation status of any rating published by Fitch, should the user wish to make use of this information. In our view, this disclosure policy is not sufficient since the disclosure of the type of rating should be self-explanatory at any time. Requiring users of ratings to contact Fitch whenever they want to receive additional information on the type of a rating can indeed be viewed as a major impediment to the use of this information in market participants’ decisions, and it remains hard to understand why Fitch should not want to publish the respective information immediately.

Other shortcomings with respect to disclosure can be observed in the policies adhered to by other CRAs in the German insurance market. E.g., Standard & Poor’s, which clearly discloses unsolicited ratings with the “pi” notation, does not give any additional information on the rated entity’s participation. Moody’s is providing that information, however, only in the form of a separate report on its Web site so that the information is not immediately accessible to users of ratings either, even more so since in other

publications by Moody's there is often no indication that a rating might be non-participating.⁷

In our view, current disclosure practices cannot be regarded as sufficient to achieve the objectives of the IOSCO Code in this area. We therefore agree with IOSCO's consultation report that the Code provision with respect to disclosure of the type of rating (3.9) should be clarified. In addition to the suggested amendments to the provision contained in the consultation report – which we fully support since it seems worth clarifying that three types of ratings must be distinguished (various combinations of initiation and participation) and stipulating full disclosure of a CRA's policy on unsolicited ratings –, we would also suggest to include in provision 3.9 an unequivocal statement that disclosure of the type of rating should be self-explanatory at any time a rating is published so that it is made clear that rating users must have immediate access to this information and cannot be referred to sources of information available only separately from the rating information itself, e.g. by contacting the CRA or accessing special reports on the CRA's Web site.

Confidentiality of information (Section 3.B. of the Code)

A further issue where a clarification of the Code provisions might be recommendable is, in our view, the question of confidentiality of the internal information provided by rated entities in the case of unsolicited ratings. CRAs often provide rated entities with the opportunity to make additional internal information available prior to an unsolicited rating in order to allow a more accurate rating assessment. In general, we welcome this approach since the quality of unsolicited ratings can be substantially improved when additional information is taken into account. However, CRAs are very often not willing to guarantee that the confidentiality of this internal information will be respected, so that issuers are exposed to a difficult dilemma between publicly releasing confidential information and risking an inferior unsolicited rating.

In the German insurance market, both Fitch (in the case of Q-ratings) and Standard & Poor's (in the case of pi-ratings) regularly invite German insurers to provide additional internal information as an input to the rating process. However, all the information made available by the companies concerned is then regarded as public information by the CRAs. We believe that this procedure can be a major impediment to the provision of internal information since many companies might not want to make relevant information publicly available. What is more, companies may face the dilemma to either accept a rating on the basis of market assumptions that do not concur with their individual situation, which might lead to an inaccurate rating assessment, or to risk internal information to become public. Therefore, some form of automatic confidentiality protection for internal information made available to CRAs might be considered as an additional provision for the business conduct of CRAs.

General applicability of the Code / definition of CRA

⁷ According to Moody's, no new agency-initiated / non-participating ratings are currently assigned in the German insurance market. Therefore, this criticism only applies to ratings assigned earlier, and eventually it might lose its relevance at all.

We agree with the consultation report that the IOSCO Code should apply to all CRAs, irrespective of their business model or size of the agency, and that the implementation of the Code by CRAs should be further promoted, e. g. by clarifying the Code's wording with respect to applicability or by making local language translations available. Particularities of a specific CRA's business model or market environment can, of course, always be taken into account when the IOSCO rules are incorporated into a CRA's own code of conduct. Where necessary, deviations from the IOSCO provisions would also be admissible as long as these deviations are justified and fully explained. Both arguments would, in our view, support the claim that the Code should be universally binding for all CRAs. On the other hand, all CRAs must be obliged to ensure that CRA-specific provisions do not fall behind the accepted minimum standards for CRAs' business conduct and that the objectives of the IOSCO Code will always be achieved.

With the further promotion of the Code, it might in some cases, however, prove difficult to decide whether a specific firm is to be regarded as a CRA and is therefore subject to the IOSCO Code for CRAs. From our experience in the German insurance market, resolving this question might in some cases not be self-evident, as there is – at least in the German insurance market – a host of entities which “rate” different aspects of insurance companies or products, reaching from traditional CRAs with an “issuerpays” business model to companies that issue ratings only as a sideline (e.g. publishing houses, consumer magazines) or even public consumer protection organisations. Therefore, we believe that it would be helpful if IOSCO gave some indication on the definition of a CRA it has in mind with respect to the applicability of the Code. A suitable starting point for the differentiation between CRAs according to the Code and other entities might be the type of rating. In our view, all entities that assess a company's financial strength or creditworthiness or the creditworthiness of securities or other financial products should definitely be regarded as CRAs and therefore be subject to the IOSCO rules, irrespective of their specific business model or the methodology applied. By contrast, entities whose activities are limited to the comparison of product features, e. g. to a comparison of insurance terms and conditions, should probably not be considered as CRAs and would therefore not be expected to comply with the provisions of the IOSCO Code.

Publication of CRAs' codes of conduct

Even though in recent years a great amount of additional information on CRAs' standards and practices has become available, in our experience it is still not always easy to assess a CRA's compliance with the IOSCO code since the required information is sometimes not or not fully publicly available. We therefore support the consultation report's proposal to request CRAs to publish their codes of conduct and any deviations from the IOSCO Code on their Web site. In addition, we would suggest that the information on compliance with the IOSCO Code should be placed prominently on the CRA's Web site so that interested market participants can easily access this information.

Further activities by IOSCO

As the effectiveness of the IOSCO Code can only be fully judged upon after some further years of experience will have been gathered, we very much welcome IOSCO's intention to continue with monitoring the implementation of the Code by CRAs and the impact of the Code in the markets. In addition to the changes to the Code resulting from the current review, further amendments of the Code provisions might prove necessary in the future should it become apparent that the objectives of the Code are not or not anymore achieved sufficiently. In our view, beside a full review process every few years, it might be desirable that IOSCO monitors developments with respect to the Code on a more frequent basis, especially regarding those Code provisions where questions and disagreements on interpretation have by now occurred or might occur in the future. For example, IOSCO could invite market participants to inform IOSCO on a regular basis about questions and disagreements with respect to a CRA's implementation of the Code. In these cases, IOSCO might even assume the role of an ultimate arbitration body. In addition, by continuing the close co-operation between IOSCO and national and regional supervisory bodies (e.g. CESR) it should be ensured that the extensive monitoring efforts by these supervisory bodies and the experience in their markets are fully taken into account in the context of a further discussion on the regulatory framework for CRAs at IOSCO level.

Berlin, 11th May 2007



11. International Banking Federation

Comment on the Consultation Report on Implementation of the IOSCO CRA Code

1. The International Banking Federation ("IBFed") welcomes the opportunity to comment on the questions and proposals outlined in the Consultation Report (also called the "Report") that was issued in February 2007 by the Technical Committee of the International Organization of Securities Commissions, dealing with the implementation of the Code of Conduct (the "Code") for Credit Rating Agencies ("CRAs").
2. The members of the IBFed are the American Bankers Association, the Australian Bankers Association, the Canadian Bankers Association, the Japanese Bankers Association and the European Banking Federation. Representing approximately 18,000 banks worldwide with assets of about US\$40 trillion, including about 700 of the world's largest 1,000 banks, we believe that the IBFed brings an important perspective to policy issues affecting the banking industry around the world.

Overview: IBFed View on the Consultation Report

3. We appreciate the focus that the Technical Committee has put on CRAs over the last few years, beginning with the publication, in 2003, of the *Statement of Principles Regarding the Activities of Credit Rating Agencies* (the “Principles”) and including the introduction of the Code itself in December 2004.

This focus, in our minds, underscores a view that is widely shared within both the securities industry and the banking industry; namely, that CRAs play an important role in the securities marketplace and that, therefore, there is a need to enhance market efficiency by improving the transparency by which CRAs decide on ratings and guard against conflicts of interest.

The importance of CRAs, we note, goes well beyond the securities marketplace. For example, banks use CRA reports in determining whether to extend credit to, engage in counterparty transactions with, or invest on behalf of themselves or their clients in entities subject to these reports. As a consequence, the full implementation of the IOSCO recommendations by the CRA industry is most important to the banking industry.

4. We believe that the publication of the Principles and the introduction of the Code went a long way to achieving these purposes and generally speaking, we believe that the proposals set out in the February 2007 Consultation Report will provide clarifications to the Code.
5. We are pleased that the proposals in the February 2007 Consultation Report do not move away from the principles-based approach underlying the 2004 Code. We believe that a principles-based approach, incorporating a “comply-or-explain” element, provides the flexibility needed to address the varying legal, regulatory and market environments within which CRAs operate around the world.
6. In our role as the umbrella organization representing most of the world’s major banks (that, as we have pointed out, are very significant users of the information provided by CRAs), we are aware that there are other recent regulatory developments of note dealing with CRAs. We express the view in this regard that the authorities and decision-makers should make sure that legislative and regulatory initiatives directed at CRAs are not at cross-purposes and that they all enhance a flexible approach to setting rules for CRAs to follow.

Factual Findings in the Consultation Report

7. We note the factual findings of the Consultation Report in terms of the extent to which the Code has been embraced by CRAs. Without being in a position to comment on these findings from a factual standpoint, we are nevertheless pleased with the Report’s conclusion that the major CRAs seem to have embraced the provisions in the Code, either by adopting and publishing codes of conduct that

materially follow the IOSCO Code or by providing appropriate disclosure in their respective codes to the extent that there are deviations from the Code.

8. We also note the finding in the Consultation Report that while there has been significant progress made in the case of the major CRAs, there is still work to be done in the case of the small and mid-sized CRAs around the world. If this is the case (and again, we are not in a position to comment on this finding from a factual standpoint), we do encourage IOSCO and its member regulatory bodies to advocate for the wider acceptance of the Code by small and mid-sized CRAs.

Proposals

9. In terms of the proposals in the Report where we have comments, we add the following:
10. Generally speaking, we support the proposals in the Consultation Report aimed at either clarifying certain provisions in the Code that have given rise to confusion over the last couple of years or addressing provisions in the Code where there has been a significant degree of deviation.
11. It is noted in the Report that there is confusion about whether the Code should apply to all CRAs regardless of business model. We agree with the need to restate that the Code is equally applicable to all CRAs.
12. Proposals are made to change paragraph 1.15 of the Code dealing with statements made about compliance staff and their reporting lines and compensation. We agree with the recommendations. As representatives of the banking industry, we strongly support initiatives aimed at addressing issues of undue influence and conflict of interest as these apply to the CRAs.
13. Proposals are made to change paragraph 2.5 dealing with conflicts of interest and “ancillary” business operations. The Consultation Report concludes that there is no need to change this paragraph by, for example, providing some guidance on what an “ancillary” business means. We are in agreement with this approach. Our view is that issues of definition should be best left to be dealt with by the CRAs themselves at the local level, following the legislative and regulatory frameworks within which they respectively carry on business. To underscore a continuing theme, we believe that there is a need for flexibility in how the distinction is to be drawn between the business operations that are subject to the CRA’s code of conduct, in each case, and any other business operations that might be carried on by the CRA and it should be left to each CRA itself to disclose the nature of any business operation that is not subject to its own code of conduct.
14. It is noted in the Consultation Report that the widest degree of deviation among CRAs applies to paragraph 3.9 of the Code. We have no problem with the need


to re-emphasize the 3 elements in this paragraph. In our view, it is important that the CRA, in each case, does address all 3 elements in its own code of conduct (i.e., using the comply-or-explain approach).

15. The Report proposes that paragraph 4.1 of the Code be changed by adding that the code of conduct of a CRA should be published on the internet. We are comfortable with this recommendation.

In Closing

16. We have appreciated the opportunity to comment on the questions and proposals in the Consultation Report. We look forward to continuing to work with you in updating the Code and in the meantime, please do not hesitate to let us know if you have any questions or comments about our submission.

Yours sincerely,

Handwritten signature of Sally J. Scutt in black ink, with a vertical red line to the right of the signature.

Sally J. Scutt
Managing Director

Handwritten signature of R. Warren Law in black ink.

R. Warren Law
Chair, IBfed Corporate Governance
Working Group

12. Zentraler Kreditausschuss

ZENTRALER KREDITAUSSCHUSS

MEMBERS: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAFFEISENBANKEN E.V. BERLIN • BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN • DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN
VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

Dear Ms. Rijk,

Thank you for the opportunity to express our opinion as Zentraler Kreditausschuss^{*} about the IOSCO Consultation Report "Review of Implementation of the IOSCO Fundamentals of a Code of Conduct for Credit Rating Agencies". We gladly use the opportunity to outline our view of the results of the IOSCO review:

The IOSCO code provides the rating agencies with guidelines to apply to their own individual ~~rules and conduct, and asks them to either comply with or explain why they deviate from the~~ code. A prerequisite to this concept is that the bank supervisory authorities check compliance with the guidelines on a regular basis. Therefore, it is important that two years after the code's

* The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (VdP), for the mortgage banks. Collectively, they represent more than 2300 banks.

release IOSCO carries out an investigation to see how its rules are being followed by the rating agencies.

We expressly welcome that in the context of its investigation IOSCO asks the opinion of the market participants. We believe this to be an essential element of the monitoring process because in the end only issuers and investors, as the parties directly affected, can provide information about to what extent the rating agencies comply with the IOSCO code not just formally but also in their actual conduct. In its first report on this to the European Commission in January 2007, CESR has, as we believe rightly, pointed out the significance of this topic and the difficulties in connection with such a review.

Basically, the big, globally active rating agencies are the business partners of our member banks. As far as we can see today, the concept has proved its worth so far with regard to this group. As IOSCO itself states, most agencies have adopted the code. With regard to the actual implementation in everyday practice, there seems to be a positive overall trend. At least we have not had any negative reports from our members.


We, therefore, agree with IOSCO's conclusions in respect of the big rating agencies. However, we would welcome it if in those cases in which agencies do not publish an explanation for a deviation from the code – or none that is comprehensible – IOSCO would insist that a clear explanation be given because only extensive application of the concept on which the IOSCO code is based will ensure a rating practice that will be acceptable to issuers and investors alike.

In view of the overall positive assessment, it is logical that IOSCO confines itself to suggesting some clarifications with regard to a possible adjustment of the code. We support the suggestions contained in the consultation paper. This, in particular, applies to the decision not to define the term "ancillary services" and to the intended clarifications in provision 3.9.

We hope our remarks have been of help to you and will be glad to answer your questions at any time.

Yours sincerely,

On behalf of ZENTRALER KREDITAUSSCHUSS
Deutscher Sparkassen- und Giroverband



Dr. Thomas Schürmann

13. Standard & Poor's

Comment on the Consultation Report on Implementation of the IOSCO CRA Code

Standard & Poor's Ratings Services ("Ratings Services") is pleased to provide its comments on the "Review of Implementation of the IOSCO Fundamentals of a Code of Conduct for Credit Rating Agencies" ("Consultation Report"), published by the Technical Committee of the International Organization of Securities Commissions ("IOSCO") in February of this year.

Ratings Services fully supports the essential purpose of the Code of Conduct Fundamentals for Credit Rating Agencies (the "IOSCO Code"), which is to promote investor protection by safeguarding the integrity of the rating process. Ratings Services' Code of Conduct ("Code of Conduct") was adopted in October 2005 in order to demonstrate the alignment of Standard & Poor's policies and procedures with the IOSCO Code.

In addition to the Code of Conduct, Ratings Services last year published a Report on the Implementation of Standard & Poor's Ratings Services Code of Conduct ("Implementation Report"). Both the Code of Conduct and the Implementation Report are publicly available on Standard & Poor's website.¹

Ratings Services recognises its role in the global capital markets and is committed to providing ratings that are objective, independent and credible. The Code of Conduct, together with Ratings Services criteria, methodologies, policies, practices, and procedures and the publication of reports, analyses, studies and articles, seeks to protect the integrity of the rating process, promote transparency, and safeguard confidential information.

Since the Code of Conduct was published, Ratings Services has been reviewing its policies and procedures as part of its process for implementing the Code of Conduct. These policies and procedures are dynamic, and Ratings Services intends to continue

¹ <http://www.standardandpoors.com>

its review to further promote the objectivity, independence and credibility of its ratings, the transparency of its ratings processes and the protection of confidential information. Ratings Services takes very seriously the feedback it receives from ratings users regarding interpretation and implementation of the Code of Conduct on a day-to-day basis.

In this respect, it is noted that public feedback to date on the effectiveness of the IOSCO Code has been broadly positive – both from ratings users as well as from regulatory authorities and policymakers.²

Overview

Ratings Services welcomes the Consultation Report and believes it takes a balanced view of IOSCO Code implementation.

Ratings Services in particular welcomes the affirmation of the “*comply or explain*” provision as a “*crucial component*” of the IOSCO Code. Ratings Services also welcomes IOSCO’s affirmation that “a CRA’s *deviation* from a provision of the IOSCO CRA Code is not itself non-implementation of that provision, or non-compliance with the IOSCO Code”.³ Ratings Services agrees that it is important to underline that the IOSCO Code is not intended to create additional third party legal rights.

Recognising the dynamic and evolutionary nature of the IOSCO Code in particular (and codes of conduct in general), Ratings Services believes the suggestion to clarify certain provisions of the IOSCO Code to be worthwhile.

Please find below more detailed comments on specific aspects of the Consultation Report.

Specific comments on the Consultation Report

Provision 1.15

The Consultation Report suggests that the Code of Conduct contains a variation from the IOSCO Code in relation to provision 1.15 and that this variation has not been explained.

By way of background, we would explain that Standard & Poor’s has in place a separate compliance function to service its different businesses including Ratings Services, namely the Global Regulatory Affairs Department. This compliance oversight function is completely independent of those who vote on ratings and conduct ratings analysis. The Analytics Policy Board ensures ongoing compliance with analytical and ratings quality standards within Ratings Services.

² See for example CESR’s “Report to the European Commission on the compliance of credit rating agencies with the IOSCO Code” and responses to CESR’s “Call for Evidence”.

³ Page 7 of the Consultation Report.

As outlined in the Code of Conduct, the Analytics Policy Board and the Executive Managing Directors of Ratings Services have been tasked with enforcement of the Code of Conduct in relation to analytical matters. The Global Regulatory Affairs Department has been tasked with enforcement of the Code of Conduct in relation to all other matters. Both advise the Executive Vice President in charge of Ratings Services concerning matters of Code of Conduct enforcement. The Executive Vice President reports to the President of Standard & Poor's.

The Executive Vice President is not involved in the day-to-day rating activities of Ratings Services and does not sit on rating committees. Moreover her reporting lines are independent of Ratings Services operations and her compensation is determined by the executive leadership of Standard & Poor's and approved by management of The McGraw-Hill Companies, Inc. ("McGraw-Hill") (of which Standard & Poor's is a wholly-owned division out of which Ratings Services conducts business) and the Compensation Committee of the Board of Directors of McGraw-Hill.

We believe that this arrangement serves to address the concerns highlighted on page 17 of the Consultation Report and in particular the need to ensure that *"the compensation and reporting lines of the person in charge of the CRA's compliance program is not dependent on or influenced by any issuer, client, or group of issuers or clients"*.

For that reason, we support the proposition that IOSCO might clarify the reasoning behind provision 1.15 of the IOSCO Code, recognizing that ultimately compliance personnel cannot be completely insulated from their employer's economic performance.

In this context we would also add that, as part of our ongoing efforts to ensure the most appropriate oversight of compliance matters and to take account of current regulatory initiatives, we have created a new role, namely that of Chief Compliance Officer, responsible for monitoring the regulatory compliance programme for Ratings Services globally. The Chief Compliance Officer will report into the head of the Global Regulatory Affairs Department, which oversees regulatory and compliance matters for Standard & Poor's global operations.

As a result of the creation of this new role, we intend to make the necessary consequential changes to the Code of Conduct to reference this role and thereby to underscore Ratings Services' commitment to align as fully as possible its policies and procedures with the IOSCO Code.

Provision 2.5

Ratings Services welcomes IOSCO's clarification that rating assessment services *"might typically fall under the ambit of the CRA's analytical staff"*⁴ as is explicitly contemplated by IOSCO Code provision 1.14, particularly because the determination of what services might constitute ancillary services has given way to some divergent

⁴ Page 17 of the Consultation Report


interpretations⁵. Ratings Services supports the approach not to define “*ancillary services*” in IOSCO Code provision 2.5, which is consistent with the flexible and principles-based nature of the IOSCO Code.

Provision 3.9

Ratings Services notes IOSCO’s view that, in the context of unsolicited ratings, “*S&P’s approach does not seem to be an actual variation*”.⁶

Please let me know if you have any questions in relation to the above. Alternatively, please feel free to contact Christopher Lake, Senior European Regulatory Counsel in Standard & Poor’s London Office (44-20-7176-3176).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Vickie A. Tillman". The signature is written in a cursive, slightly stylized font.

Vickie A. Tillman

⁵ See CESR’s “Report to the European Commission on the compliance of credit rating agencies with the IOSCO Code” and responses to CESR’s “Call for Evidence”.

⁶ Page 12 of the Consultation Report



14. The European Federation of Financial Analysts Societies

The European Federation of Financial Analysts Societies, EFFAS, is the European umbrella organisation of national investment professional societies. It comprises 24 member associations representing more than 14,000 investment professionals in the areas of Equity and Bond Research, Asset and Portfolio Management as well as Investment Advice.

We take pleasure to comment on the review of implementation of the IOSCO Fundamentals of a Code of Conduct for Credit Rating Agencies (IOSCO CRA Code) which was published as of 14 February 2007.

We appreciate the findings according to which a major part of bond issues are rated by rating agencies that have implemented the IOSCO CRA Code completely. Even though the chief objectives of the IOSCO CRA Code seem to have been accomplished thereby, one must not ignore that the majority of the (mid- or small-size) rating agencies have not adopted and published codes of conduct that, if at all, are consistent with the IOSCO CRA Code. One should further note that the IOSCO CRA Code are partly characterized by a high degree of abstraction. This necessarily makes it more difficult to determine whether the rating agencies have in fact duly adopted the IOSCO CRA Code, and this fact may not even be considered adequately in the consultation paper. The task force, for instance, does only examine the statements of the rating agencies. Effective control of the implementation of specific guidance rules requires thorough analysis of the business operations of the rating agencies. The high level of abstraction leaves room for interpretation regarding the restrictions the rating agencies promise to observe. This is not sufficient.

We suggest that unitary minimum standards are put in place. The Society of Investment Professionals in Germany (DVFA) has established an independent commission for rating standards with the function of developing and promoting rating standards. An example could be the DVFA Rating/Validation Standards (Updated version August 2006),

which are attached. Insofar, the DVFA Rating/Validation Standards with their relatively detailed rulings may further reduce the range of possible interpretation and provide a helpful tool in the sense of a supplemental quality standard for rating agencies.

Yours sincerely,



Fritz H. Rau
Chairman of EFFAS



Giampaolo Trasi
Chairman of the EFFAS MSC

[Also sent in but not included in this overview: DVFA-Rating Standards and DVFA-Validation Standards – www.dvfa.de]



Moody's Investors Service

15. Moody's Investors Service

Moody's Investors Service ("MIS") appreciates the opportunity to comment on the abovementioned consultation report (the "Report") of the Chairmen's Task Force of the IOSCO Technical Committee (the "Task Force").

MIS endorsed the 2004 IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (the "IOSCO Code" or the "Code"), and in June 2005 we published the MIS Code of Professional Conduct (the "MIS Code") which, as noted in the Report, largely follows the provisions of the IOSCO Code. We believe that the principles underlying the IOSCO Code represent sound business practices for the rating agency industry, and that the Code, with its "comply or explain" mechanism, allows rating agencies the flexibility to implement its provisions in a manner appropriate for their size and business model.

We believe that the IOSCO Code has increased transparency around rating agency practices and has enhanced the level of understanding of, and confidence in, our industry. Moody's appreciates the constructive approach taken by the Task Force in its review and Report, which we believe will bolster these important positive outcomes. We also believe that the continued involvement of the IOSCO Technical Committee in providing relevant guidance on the Code, and modifications to better reflect market realities, will be important in encouraging the emergence of a common global understanding of its provisions. This will become even more important as IOSCO actively encourages wider adoption of the Code.

We agree with the Task Force's general conclusions that the following aspects of the IOSCO Code might benefit from clarification by the Technical Committee:

- (i) The IOSCO Code is equally applicable for all types of CRAs, regardless of business or analytical model.
- (ii) The IOSCO Code is not meant to create third party legal rights not already present in the jurisdictions in which CRAs operate. As the Task Force notes, the Code's provisions are meant to guide and advise, while its "comply or explain" mechanism affords CRAs flexibility to devise their own codes tailored to their own circumstances.
- (iii) Code Provision 1.15 is meant to ensure that the CRA's compliance function should be insulated from undue pressures that income from a particular issuer may present, while also recognizing that, if the primary source of income for a CRA is its ratings business, CRA personnel cannot be completely insulated from the CRA's economic performance.
- (iv) CRAs should define what they consider to be "ancillary services," allowing investors and other market participants to judge whether this adequately addresses any conflicts of interest. We agree with the Task Force that there may be confusion regarding what constitutes an "ancillary" business for a CRA. We further agree that "rating assessment services", as the Task Force has described them in the Report, are integral credit rating services and are not ancillary to a CRA's business. For Moody's part, we continue to consider potential clarifications to our definitions of ancillary and non-ratings products and services, to improve the transparency of our disclosures.
- (v) A CRA's code of conduct should address each of the three components of Code Provision 3.9 dealing with rating participation and solicitation. We discuss this in more detail below.
- (vi) CRAs should publish their codes of conduct using the internet, to ensure that their codes and explanations of variations from the IOSCO Code are widely available.

We believe that these clarifications are consistent with the principles underlying the IOSCO Code, and that they can help to increase the market's and regulators' confidence in CRAs and their ratings.

Below, we discuss our views on two specific observations related to MIS in the Report.

1. Provision 2.8 – fee disclosure of the proportion of ratings services as compared to non-rating services

In the Report, the Task Force states:

"Moody's does not, however, indicate the proportion of ratings versus non-ratings fees it receives for each individual issuer. Moody's explains this variation

from the IOSCO Code by noting that the overall proportion of non-ratings fees is so low that an individual breakdown is not necessary for each and every case and that, at any rate, the barriers it places between its ratings operations and consulting services are sufficient to prevent the creation of conflicts of interest.” (emphasis added.)

The explanation above may imply that MIS provides consulting services to issuers. We would like to clarify that MIS does not provide any advisory or consulting services that enable issuers to retain MIS analysts for advice on general management or rating-related matters. Rather, in the interest of transparency, we have identified in the disclosure page on our website (www.moody.com) certain services provided by MIS that are not directly derived from our credit rating services. These services, which mainly consist of general credit training courses and research products that compile and explain market-based credit rating indicators, are not consulting in nature and in our opinion, do not pose significant conflicts, both because of their nature and their immateriality. Given this, combined with the conflict management policies that we have in place, we believe that MIS’s implementation of provision 2.8 is consistent with the underlying principle of the IOSCO Code.

We are considering modifications to clarify provision 2.8 in the next edition of the MIS Code, which we plan to publish in the near future.

2. Provision 3.9 – non-participating /unsolicited ratings

In the Report, the Task Force states:

“...while Moody’s code states that the firm will indicate if an issuer did not participate in a rating, it does not explicitly state that it will indicate if an issuer did not initially request the rating. Nonetheless, Moody’s does state that it has not assigned unsolicited ratings in the recent past. Consequently, this variation may indicate an oversight rather than a true variation.”

Although not referenced in the MIS Code, MIS has a policy on Designating Unsolicited Credit Ratings, which is publicly available on our website. As a result, we can confirm IOSCO’s assumption that this variation was an oversight. Moody’s believes that we have addressed all three components of Provision 3.9 – (i) a statement regarding unsolicited rating policies; (ii) disclosure of issuer participation; and (iii) disclosure of whether a rating is unsolicited. As noted above, we agree with the Task Force conclusion that IOSCO might consider emphasizing that it is important that CRAs address all three components as each addresses a different market concern. To ensure clarity, we will specifically reference our policy on unsolicited ratings in the next edition of the MIS Code.

If we can be of further assistance to the Task Force when completing its review of the IOSCO Code, or you wish to discuss any matters arising from this comment letter, please do not hesitate to contact us.

Yours Sincerely,



Jeanne M. Dering
Executive Vice President
Global Regulatory Affairs and Compliance



17. A.M. Best Company

A.M. Best Company appreciates the opportunity to provide comments to the Chairmen's Task Force of the Technical Committee of the International Organization of Securities Commissions regarding its Consultation Report on the *Review of Implementation of the IOSCO Fundamentals of a Code of Conduct for Credit Rating Agencies*.

The Task Force notes in the Consultation Report section titled *CRAs with strong implementation* that the most prominent trend among the five firms that most comply with the IOSCO CRA Code (Moody's, S&P, Fitch, DBRS and A.M. Best) is that these firms possibly deviate from Provision 3.9. The Task Force specifically notes with respect to A.M. Best:

“... while A.M. Best's code of conduct states it will disclose whether an issuer participated in the ratings process, it does not state that it will disclose its policies regarding unsolicited ratings or whether a rating was not initiated at the request of the issuer. A.M. Best does not offer an explanation for this variation.”

The Task Force also notes in the Consultation Report section titled *Potential areas for clarification of the IOSCO CRA Code* that:

“The IOSCO provision with the widest degree of variation is Provision 3.9. In some cases, this variation is explained by the CRAs. However, in other cases, variations are not explained. Consequently, it may be valuable for IOSCO to emphasize that Provision 3.9 has three components: (1) a statement regarding unsolicited ratings policies, (2) disclosure of issuer participation in a rating, and (3) disclosure of whether a rating was not initiated at the behest of the issuer. A CRA's code of conduct should address each of these three points, since each, in turn, addresses a different market concern. Where a CRA's code

deviates from the IOSCO CRA Code on any one of these points, this variation should be noted and explained.”

With respect to the three components of IOSCO Provision 3.9, A.M. Best provides further clarification as follows:

- (1) Statement regarding unsolicited ratings policies - Section II of The A.M. Best Code of Conduct states the following (**emphasis added**):

Best’s Public Data Ratings:

A.M. Best does not assign ratings to specific securities issued by companies that are assigned a “pd” Financial Strength or Issuer Credit Rating.

In certain circumstances, Best may assign “Public Data” (pd) ratings, which are assessments as to the creditworthiness of an organization that is arrived at **without the full participation** of the rated entity. These ratings are expressed using the same ratings scales and definitions as A.M. Best’s **interactive** Financial Strength and Issuer Credit ratings; however, a “pd” rating modifier is applied to ensure that the user is aware of the limited information basis for the rating. A.M. Best has been assigning public data-type ratings since 1998. The first use of these ratings was to enhance its coverage of the health-care industry, particularly health maintenance organizations (HMOs), which had been plagued by instability and poor financial results. Later, “pd” ratings were assigned in the insurance markets of the United Kingdom and Canada. By expanding our coverage through such ratings, A.M. Best believes it considerably increases market transparency and therefore benefits the insurance and financial markets.

Best’s “pd” Ratings incorporate the relevant information on a specific entity that is available in the public domain, however, does not generally involve interaction with company management. The decision to assign a “pd” rating is made only when there is sufficient information to support adequate analysis and where the assignment of such ratings would serve market interests.

A.M. Best does not send entities assigned a “pd” rating an invoice for its ratings services following the assignment and release of such ratings.

Rating methodologies regarding the “pd” rating process are available on A.M. Best’s website. Public Data ratings are initiated by A.M. Best and as such, the company believes, are what IOSCO refers to as “unsolicited.”

- (2) Disclosure of issuer participation in a rating - All ratings issued by A.M. Best other than those described as “pd” ratings in item (1) above are considered by A.M. Best to be “issuer participating” and assigned in accordance with A.M. Best’s published methodologies. A.M. Best has maintained interactive dialogue and rating relationships with senior management of the entities that it rates for decades. In the vast majority of these relationships, A.M. Best meets with company management to discuss information provided by these organizations at least annually, and in some instances, more frequently. Information regarding the rating process, including “issuer participation” is described in Best’s Rating methodologies, which are available on our website.
- (3) Disclosure of whether a rating was not initiated at the behest of the issuer - As discussed in item (2) above, A.M. Best has maintained interactive dialogue and formal rating relationships with the companies that it rates for decades. These accepted and long established business practices, which include rated entities compensating A.M. Best for its rating services, have been in place for years. These organizations expect, and in all cases have prior knowledge of, the ratings issued by A.M. Best. Additionally, these organizations can, and have always had the ability to, request that the organization not be rated by A.M. Best. In such instances, A.M. Best withdraws the ratings. Given these circumstances, A.M. Best assumes that ratings are “requested”, and are therefore “solicited.” As noted in item (1) above, A.M. Best provides disclosure of ratings that are not “requested” at the behest of the issuer by adding a “pd” modifier.

In recognition of the recently published IOSCO Code, current practices require that all new rating relationships be documented by the issuer and A.M. Best entering into a rating agreement. Part of this agreement sets forth obligations of A.M. Best with respect to ratings and the rating process, many of which are components of the IOSCO Code, and obligations of the issuer. In order to specifically satisfy the IOSCO Code requirement regarding which party “initiated/solicited” the ratings process, the agreement also includes a statement that the issuer is requesting the ratings issued by A.M. Best.

We hope that this letter sufficiently clarifies established industry practice and how A.M. Best intends to demonstrate conformity with the IOSCO Code regarding Provision 3.9 going forward. As you know, the United States Securities and Exchange Commission is currently in the process of finalizing its rules for implementation of the Credit Rating Agency Reform Act of 2006. Following the issuance of the rules, A.M. Best may shortly thereafter make revisions to the A.M. Best Code to incorporate items relevant to the Act. At that time, we will also consider revising the language of the A.M. Best Code with respect to the clarification of Provision 3.9 issues noted.

Sincerely,

David A. Brey

David A. Brey
Vice President and
Compliance Officer