

Supervisory Colleges for Credit Rating Agencies

Consultation Report



IOSCO

**THE BOARD
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

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Foreword

The Board of the International Organization of Securities Commissions (IOSCO Board) has published this Consultation Report, *Supervisory Colleges for Credit Rating Agencies*, prepared by IOSCO Committee 6 on Credit Rating Agencies (IOSCO C6). This Consultation Report makes certain recommendations regarding the implementation and operation of supervisory colleges for internationally active credit rating agencies. The IOSCO Board seeks the views of stakeholders, and particularly internationally active credit rating agencies (CRAs), on the questions posed in this Consultation Report to refine and enhance the recommendations regarding supervisory colleges for credit rating agencies.

How to Submit Comments

Comments may be submitted by one of the three following methods **on or before Friday 15 February 2013**. To help us process and review your comments more efficiently, please use only one method.

Important: All comments will be made available publicly, unless anonymity is specifically requested. Comments will be converted to PDF format and posted on the IOSCO website. Personal identifying information will not be edited from submissions.

1. Email

Send comments to CRA@iosco.org.

- The subject line of your message must indicate *Supervisory Colleges for Credit Rating Agencies*.
- If you attach a document, indicate the software used (*e.g.*, WordPerfect, Microsoft WORD, ASCII text, etc.) to create the attachment.
- Do not submit attachments as HTML, PDF, GIFG, TIFF, PIF, ZIP or EXE files.

2. Facsimile Transmission

Send by facsimile transmission using the following fax number: + 34 (91) 555 93 68.

3. Paper

Send 3 copies of your paper comment letter to:

Mr. Tim Pinkowski

International Organization of Securities Commissions (IOSCO)

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Spain

Your comment letter should indicate prominently that it is a '*Public Comment on Supervisory Colleges for Credit Rating Agencies.*'

Supervisory Colleges for Credit Rating Agencies

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Chapter 1 - Background

Since 2006, an increasing number of IOSCO members have established registration and oversight programs for CRAs. Supervision of the CRAs includes examinations and inspections conducted on-site and remotely of the CRAs' books and records. IOSCO's evaluation of CRA regulatory programs across different jurisdictions reveals that while the structures, specific provisions, and level of implementation of those programs may differ, the objectives of the four IOSCO CRA principles – quality and integrity of the ratings process; management of conflicts; transparency; and treatment of confidential information – are embedded into each of the programs.¹ Indeed, the IOSCO CRA principles appear to be the building blocks upon which CRA regulatory programs have been constructed.

While most CRAs are relatively small and operate in one jurisdiction, the largest CRAs have multiple affiliates and offices located in jurisdictions around the globe. Generally, these internationally active CRAs seek to have centralized policies, procedures, controls, and rating methodologies that apply throughout the organization. Moreover, they issue “global” ratings that are intended to express the view of the organization as a whole and to be comparable with other global ratings issued by the CRA without regard for which affiliate or office conducted the work and analysis to determine the rating. Further, analysts in different jurisdictions may collaborate in producing credit ratings (*e.g.*, serving on electronically convened rating committees). Also, internationally active CRAs use enterprise-wide information technology (IT) platforms.

Each internationally active CRA is overseen by multiple supervisors located around the world, but the scope of a given supervisor's oversight can vary. For example, under the U.S. program, a CRA can include any affiliate within its registration. In the European Union (EU), each affiliate located in an EU country must register with the European Securities and Markets Authority (ESMA). In other jurisdictions, only the local affiliate of the internationally active CRA is registered with the local supervisor.

The dispersion of internationally active CRA affiliates worldwide presents a challenge to supervisors, as they may only have perspective on the activities of the internationally active CRA conducted in their jurisdiction. One potential way to address this challenge is to form a “college of regulators” to operate as a forum for exchanging information about an internationally active CRA. With respect to CRAs, IOSCO has been considering such an approach for a number of years. For example, in 2009, IOSCO's Technical Committee (the predecessor to the IOSCO Board) discussed mechanisms by which regulators could ascertain the degree to which CRAs adhere to the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (IOSCO CRA Code)² and in the case of any discrepancies, the reasons underlying them. Several alternatives were discussed, including the idea of establishing a new body authorized by IOSCO that would undertake a coordinating role among IOSCO members who regulate CRAs, serve as a focus of discussion with the CRA industry, or even take on a global compliance examination function itself. After deliberation, the IOSCO CRA Task Force (predecessor to IOSCO C6) agreed that greater regulator-to-regulator cooperation through informal mechanisms such as a *college of regulators* might be the best forum to accomplish these goals. A CRA college was viewed as being less likely to raise legal or regulatory issues among the various IOSCO

¹ See *Regulatory Implementation of the Statement of Principles Regarding the Activities of Credit Rating Agencies*, Final Report, Report of the Technical Committee of IOSCO, Feb. 2011, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD346.pdf>.

² *Code of Conduct Fundamentals for Credit Rating Agencies*, Report of the Technical Committee of IOSCO, revised May 2008, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD271.pdf> (“IOSCO Code of Conduct for CRAs”).

jurisdictions than the other types of bodies contemplated by the Technical Committee. Thereafter, IOSCO C6 formally commenced work on analyzing whether a CRA “college of regulators” would be of benefit to CRA supervisors and, if so, how one might be established and function in practice.

This Consultation Report preliminarily recommends that supervisory colleges for internationally active CRAs (CRA colleges) be established to serve as a resource for CRA supervisors by facilitating information exchange and, if appropriate, cooperation. This type of resource could ultimately enhance the effectiveness of supervisors’ risk assessment and oversight of internationally active CRAs.

Chapter 2 - Principles regarding supervisory colleges

A number of international bodies and standard setters, including IOSCO, have identified high-level principles relevant to the establishment of supervisory colleges. This Consultation Report draws from that work and seeks to tailor existing principles to the CRA business model.

Relevant papers include IOSCO’s “Principles Regarding Cross-Border Supervisory Cooperation”³ and the Basel Committee on Banking Supervision’s “Good practice principles on supervisory colleges.”⁴ The recommendations of this Consultation Report build on the recommendations contained in these reports. Some of the most important elements of “colleges of supervisors” noted in these papers include, among other things, the following principles.⁵

From the IOSCO Cross-Border Principles:

- Authorities should, on the basis of mutual trust, consult, cooperate and be willing to share information to assist each other in fulfilling their respective supervisory and oversight responsibilities for regulated entities operating across borders, such as credit rating agencies.
- Mechanisms for supervisory cooperation should be designed to provide information both for routine supervisory purposes and during periods of crisis.
- As appropriate, authorities should enter into memoranda of understanding (“MOUs”) to share relevant supervisory information in their possession.
- Authorities must establish and maintain appropriate confidential safeguards to protect all non-public supervisory information obtained from another authority.

³ See *Principles Regarding Cross-Border Supervisory Cooperation* Final Report, Report of the Technical Committee of IOSCO, May 2010, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf> (IOSCO Cross-Border Principles).

⁴ See *Good practice principles on supervisory colleges*. Basel Committee on Banking Supervision, Oct. 2010, available at <http://www.bis.org/publ/bcbs177.pdf> (BCBS Good Practices).

⁵ While the BCBS Good Practices provide relevant general guidance on colleges, the CRA colleges would be different than the European Union’s banking colleges described in Appendix 1 of the BCBS Good Practices. In particular, CRA colleges are intended to be a non-legally binding framework of cooperation between their members rather than binding members through joint decisions.

From the BCBS Good Practices:

- Colleges should enhance information exchange and cooperation between supervisors to support effective supervision of international banking groups.
- College members should make their best efforts to share appropriate information with respect to the principal risks and risk management practices of the banking group.
- Mutual trust and relationships are key for effective information sharing. Nonetheless, formal confidentiality arrangements, such as contained in MOUs, among college members facilitate this process.
- Supervisory colleges should promote collaborative work between members.
- Sharing and allocation of tasks does not absolve supervisors of their obligations. In particular, collaborative work should not imply delegation of an individual supervisor's responsibilities, or of joint decision-making responsibilities.
- Colleges are not intended to be decision-making bodies but should provide a framework to enhance effective supervision of international banking groups on a consolidated and solo basis, and could inform decision-making in that regard.
- Physical meetings should be held on a regular basis as agreed by the college's members and for the core colleges of the largest banking groups, at least annually. In between physical meetings, use of video and/or audio conferences should be considered to facilitate exchange of supervisory assessments.

Chapter 3 - Objectives of establishing supervisory colleges

3.1 The function of a CRA College

CRA colleges would be collaborative arrangements between supervisors that strive to promote information sharing, consultation, and cooperation in order to enhance risk assessment of internationally active CRAs and to support effective supervision of such CRAs. For example, the type of information that might be discussed or shared, where appropriate, could include inspection or examination findings with respect to: (1) the CRA's compliance with local or regional laws and regulations; (2) the CRA's implementation and adherence to the IOSCO Code; and (3) the establishment and operation of rating models and methodologies, internal controls, procedures to manage conflicts of interest, and procedures for handling material non-public information. Other relevant information could include the CRA's business activities, sources of revenue, strategic initiatives, and new rating products, as well as material changes to the CRA's management personnel, corporate structure, business mix, and resources devoted to rating activities. The role of a CRA college would be to create a mechanism for sharing and discussing this type of information with the goal of promoting a better understanding of the risks faced or posed by an internationally active CRA and how relevant supervisors are addressing these risks. In addition, where desired among the members, a CRA college may facilitate consensus recommendations on how to address key risks faced or posed by the CRA through heightened supervision and/or targeted examination and inspection activities, consistent with national laws.

A CRA college would not be a substitute for the autonomous supervision each member of the college would continue to undertake with respect to the internationally active CRA, nor would the CRA college replace or take precedence over the responsibilities of each supervisor to oversee the CRA. Further, a CRA college would not be a substitute for routine *bilateral* information sharing and cooperation among two college members, and is not intended to replace or supersede bilateral or multilateral MOUs or other relevant cooperative arrangements between college members, whether for supervisory or enforcement purposes.

3.2 Interaction with IOSCO C6

CRA colleges would not be authorized by IOSCO and would be independent of IOSCO. However, IOSCO C6 would remain the appropriate international forum for coordinating the development of policy and guidance relevant to CRAs. For example, IOSCO C6 could provide guidance to the CRA colleges with regard to the proper interpretation of the IOSCO Cross-Border Principles and the IOSCO CRA Code. This could promote consistent interpretations by the college members as each member conducts its autonomous supervisory activities at the local level (*e.g.*, examinations and inspections of the affiliates or branches they supervise).

Moreover, the work of IOSCO C6 would continue to contemplate all types of CRAs, whereas CRA colleges would focus only on internationally active CRAs. In addition, CRA colleges would need to be attended by personnel who are part of the CRA inspection or examination function within their respective supervisory organization, who possess detailed and comprehensive information obtained from performing this function, and who are authorized to share the information with the college members. In contrast, the participants of IOSCO C6 typically will continue to be personnel within the supervisory organization responsible for policymaking (*e.g.*, writing/interpreting rules and regulations), and, therefore, may not be involved in the day-to-day supervision of CRAs (*e.g.*, conducting inspections or examinations).

However, CRA colleges could play an important role in the process of policy development, locally and internationally. For example, the CRA colleges could provide feedback to IOSCO C6 on the effectiveness of current standards, policies, and procedures applicable to internationally active CRAs, and/or share their risk assessments. In addition, CRA colleges could make recommendations to IOSCO C6 based on issues identified as part of the college members' supervision activities with respect to internationally active CRAs in order to enhance the development and updating of standards by IOSCO C6.

Role of	
IOSCO C6	CRA college
<ul style="list-style-type: none"> • Develops principles and standards • Coordinates discussions between the CRA industry and regulators • Interprets IOSCO Cross-Border Principles and IOSCO Code of Conduct for CRAs • Revises the IOSCO Code of Conduct for CRAs • Attended by policy specialists 	<ul style="list-style-type: none"> • Promotes information sharing among supervisors of an internationally active CRA • Conducts collective risk assessment with respect to an internationally active CRA • Coordinates supervisory activities (if agreed upon by members) • Provides feedback on application of IOSCO Cross-Border Principles and IOSCO Code of Conduct for CRAs and makes recommendations to IOSCO C6 for updates or clarification of the IOSCO Cross-Border Principles and Code • Shares collective risk assessment with IOSCO C6 • Attended by examiners and/or inspectors of CRAs

Chapter 4 - Benefits

IOSCO C6 conducted a survey of its members in 2011, and considered the potential practical benefits of establishing CRA colleges. It concluded that its member supervisors could benefit from CRA colleges for internationally active CRAs for which the supervisors have direct oversight responsibility. The types of potential benefits identified by individual IOSCO C6 members include, among other things, the following:

- Improved quality of supervision (including internal operations of the supervisor) resulting from the broader information base that could be available through more routine information exchanges and other forms of cooperation between supervisors, including the sharing of regulatory and supervisory experience;
- Enhanced quality of information and analysis through the information exchange;
- Improved ability to assess the risks of a particular CRA;
- Operational efficiencies (*e.g.*, avoiding duplication of work) that could facilitate the more efficient utilization of both supervisors' and CRAs' resources. For example, some individual members suggested that:
 - If a particular supervisor, as part of its autonomous oversight responsibilities, would (absent the college) normally request information from a CRA's foreign affiliate(s) or inspect that affiliate to the extent doing so is within the scope of its oversight, the CRA college may save the supervisor resources if the home supervisor of the affiliate(s) can collect and then share that information through the college, including possibly conducting the necessary inspection and reporting the results to the requesting supervisor. The college also could facilitate joint inspections.⁶
 - Where several supervisors require, as part of their own oversight responsibilities, the same information from the same CRA, if only one supervisor requests (and then shares) that information, this could eliminate the need for the CRA to respond to multiple requests.
- Fostering the pursuit of common regulatory objectives, *e.g.*, through the promotion of the consistent interpretation and application of the IOSCO CRA Code and the same regulatory requirements promulgated by multiple jurisdictions.

Chapter 5 - Format

5.1 Subjects of a supervisory college

CRA colleges should be considered only for a CRA that is internationally active in that it has significant cross-border operations, has affiliates and/or branches located in multiple jurisdictions with CRA supervisory programs, and whose credit ratings are relied on by investors and other users of credit ratings in multiple jurisdictions. For example, a CRA that could be considered for a college would be one that is internationally recognized, is organized

⁶ It may not always be possible for supervisors to conduct inspections on behalf of foreign supervisors or to conduct joint inspections. In addition, there may be restrictions on sharing written examination findings due to local statutes, regulations, and/or policies. Nonetheless, when a supervisor inspects a firm at the request of a college supervisor, it may be possible to share, at least orally, the most important findings. In addition, conducting joint inspections may overcome limitations on a particular supervisor's ability to share written examination reports. There may still be resource savings, however, as the host supervisor may be able to organise and coordinate the inspection.

as a group, and has separate legal entities and/or branches located in multiple jurisdictions with supervisory programs.

For those CRAs that do not meet these criteria but do have cross-border activities, ad hoc bilateral or multilateral cooperation would be more appropriate than a supervisory college, given the resources needed to operate and participate in a college.

PRELIMINARY RECOMMENDATION

Supervisory colleges should be considered only for internationally active CRAs that have significant cross-border operations, have affiliates or branches located in multiple jurisdictions with CRA supervisory programs, and whose credit ratings are relied upon by investors and other users of credit ratings in multiple jurisdictions. In general, a CRA college would be appropriate only for a CRA that is internationally recognized, is organized as a group, and has separate legal entities and/or branches located in multiple jurisdictions with CRA supervisory programs.

5.2 Membership

The success of a CRA college will depend on its ability to function as a mechanism for the robust exchange of information about an internationally active CRA that is detailed and material to the supervision of the CRA, where appropriate. Each member of the CRA college must be: (1) prepared to share this type of information with the other members of the college, where appropriate; (2) comfortable that the information shared by the member will be treated in accordance with relevant information sharing agreements; and (3) confident that each of the other members of the college, in turn, would share such information. Consequently, membership in the college would need to be limited. Otherwise, its effectiveness could be diminished because members may not feel comfortable sharing detailed information with a large group or confident that they will receive such information in return from each of the other members. For these reasons, the most important criteria for membership in the CRA college would be:

1. The internationally active CRA has a separately incorporated significant affiliate or branch⁷ physically located in the jurisdiction of the IOSCO member, which:
 - a. Issues ratings in the name of the CRA; and
 - b. Is subject to the global policies and procedures of the internationally active CRA.
2. The IOSCO member has the statutory authority to directly supervise the affiliate or branch as a CRA, including the ability to promulgate regulations, conduct examinations and/or inspections, to compel documents, evidence, and other

⁷ The ultimate decision as to whether an affiliate or branch is “significant” would lie within the discretion of the CRA college’s chairperson. A non-exclusive list of factors that the chairperson might consider in determining whether an affiliate or branch is significant could include, but is not limited to, whether the affiliate or branch is materially engaged in credit rating activities, the number of analysts located at the affiliate or branch, the percentage of the CRA group’s revenue generated by the affiliate or branch, the number of obligors or instruments located in the affiliate or branch’s jurisdiction that are rated by the CRA group, and the location of significant IT operations that support the rating activities of the group. The CRA college’s chairperson should be transparent with regard to his or her decision-making process.

information, and to initiate enforcement actions for violation of statutes and regulations relating to its activities as a CRA.

3. The IOSCO member has the authority (or delegated power) and willingness to share relevant information with other members of the CRA college and the legal authority to safeguard the confidentiality of non-public information it receives from other members of the CRA college.

The first two criteria are important, because they ensure access to the internationally active CRA's affiliates and branches via the relevant supervisor and that the supervisor will be able to provide information that is material to the supervision of the CRA. It is less likely that an IOSCO member will have up-to-date and materially relevant information to share with the CRA college if the supervisor does not have the power to supervise the CRA, and if the CRA does not have an affiliate or branch located in the member's jurisdiction that the member regularly examines or inspects. Regarding the third criterion, it is important that information sharing arrangements among college members are implemented, since information sharing on a confidential basis is crucial to the success of the CRA college. Moreover, each college member would need to be willing to share this information with the other member of the college. In other words, there would need to be an understanding that serving as a member of the college would entail a reciprocal arrangement under which information must be shared in order for information to be received

IOSCO members that do not have a significant affiliate or branch of the CRA in their jurisdictions but nonetheless have an affiliate or branch of the CRA may want to participate in the supervisory college as well. In this case, it may be appropriate to establish a core college and a general college. The core college would be comprised of the supervisor that oversees the CRA's main entity and the supervisors that oversee its significant affiliates and branches. The general college would include all members of the core college plus supervisors that oversee non-significant affiliates and branches in their jurisdictions. General college meetings would focus on the same issues discussed during core college meetings, but in less detail. In addition, general college meetings likely would be scheduled less frequently than core college meetings, since more members' schedules would need to be coordinated. This bifurcated approach would allow the core college to delve into the CRA's issues in more depth, while also allowing more jurisdictions to participate in the general discussion about the CRA.

PRELIMINARY RECOMMENDATION

In order to become a member of a CRA college, an IOSCO member must at a minimum meet the following criteria:

1. The CRA has a significant affiliate or branch physically located in the jurisdiction of the supervisor, which:
 - a. issues ratings in the name of the CRA; and
 - b. is subject to the global policies and procedures of the internationally active CRA.
2. The IOSCO member has the statutory authority to directly supervise the CRA's affiliate or branch as a CRA, including the ability to promulgate regulations, conduct examinations and/or inspections, to compel documents, evidence, and other information, and to initiate enforcement actions for violation of statutes and regulations.
3. The IOSCO member has the authority (or delegated power) and is willing to share relevant information with other members of the CRA college and the legal authority to safeguard the confidentiality of non-public information it receives from other members of the CRA college.

CRA colleges would have the option to create a general college consisting of a larger group of supervisors. The core college's members would be representatives of the supervisors regulating the CRA's main entity and its affiliates/branches. In order to become a member of the general college, an IOSCO member would need to meet the same criteria above except that in the case of the first criterion the CRA would need to have an affiliate or branch located in the jurisdiction of the supervisor (as opposed to a significant affiliate or branch).

5.3 Chairperson

In general, the supervisor in the jurisdiction where the internationally active CRA has its principal place of business (*e.g.*, the country where the CRA's headquarters are located (the home jurisdiction)) would appoint the chairperson, unless the supervisor in the home jurisdiction delegates the chairperson function to another supervisor. The chairperson appointed by the home jurisdiction supervisor would determine whether other supervisors seeking membership in the CRA college meet the criteria for membership discussed in section 5.2. This determination process would need to be exercised in a fair and reasonable manner. Having selected the CRA college's members, the chairperson would schedule the first meeting of the CRA college.

In certain cases, however, it may be unclear who should be considered the home jurisdiction supervisor of the internationally active CRA, or the home jurisdiction supervisor may fail to act to form a college. Under such circumstances, where a number of interested jurisdictions see the need to form a CRA college, the IOSCO Secretariat could fulfill the chairperson's tasks prior to the CRA college's first meeting to support the establishment of the college. At the CRA college's first meeting, the meeting attendees would decide on the college's chairperson. In selecting the chairperson, college members should consider, among other things, where the CRA's significant operations are located, as well as the potential chairperson's experience and management responsibility in the relevant supervisory organization.

Subject to the chairman's authority to select the initial members of the college, all members of the college would have equal rights and responsibilities. The chairperson's primary role would be to perform a supportive and facilitating function. This role would include coordinating activities of the CRA college such as planning the meetings, setting meeting agendas, distributing information to members, organizing presentations, and chairing the meeting. However, all college members should have the opportunity to propose additional agenda items for discussion that, if reasonable, will be accepted by the chairperson. The chairperson also would have primary responsibility for communicating with others outside of the CRA college regarding the business of the college. For example, the chairperson could relay information between the college and the relevant CRA, as appropriate, as well as between the college and IOSCO C6. In summary, in order to ensure the efficiency and effectiveness of the CRA college, the chairperson should act as a central point of contact for any matter related to the CRA college's internal organization or operations.

PRELIMINARY RECOMMENDATION

In general, the home jurisdiction supervisor of the internationally active CRA would appoint the chairperson of a CRA college, unless the home jurisdiction supervisor delegates the chairperson function to another supervisor. The CRA supervisor appointing the chairperson should designate a candidate for chairperson who has relevant experience and significant management responsibility with respect to supervising CRAs.

The process for selecting the initial members of the CRA college would be administered by the chairperson appointed by the home jurisdiction supervisor. The chairman would determine whether other supervisors seeking membership in the CRA college meet the criteria for membership discussed in section 5.2. This determination process would need to be exercised in a fair and reasonable manner.

In certain cases, however, it may be unclear who should be considered the home jurisdiction supervisor of the internationally active CRA, or the home jurisdiction supervisor may fail to act to form a college. Under such circumstances, where a number of interested jurisdictions believe there is a need to form a CRA college, IOSCO could facilitate organizing the college's first meeting, and at the first meeting, the meeting attendees would decide on the college's chairperson. In selecting the chairperson, college members should consider, among other things, where the CRA's significant operations are located, as well as the potential chairperson's experience and management responsibility in the relevant supervisory organization.

In all cases, the chairperson should ensure that the following common functions are performed within the context of the CRA college:

- Circulating meeting agendas and updated contact lists of college members;
- Recording meeting minutes and formal action points;
- Facilitating communication between the CRA's supervisors;
- Updating IOSCO C6 on the internal organization and operations of the college and its relevant participants (*i.e.*, college composition); and
- Serving as a liaison with the chairpersons of other colleges so as to ensure that the college's work is aligned with the work of other colleges (*i.e.*, cross-college coherence).

5.4 Meetings

Regular face-to-face meetings of CRA supervisors are a critical feature of effective cooperation between the supervisors. As stated above, the BCBS Good Practices recommended that supervisory colleges for the largest banking groups meet in-person at least once per year. IOSCO agrees that this would be appropriate for a CRA college.

In addition to annual in-person meetings, the CRA college should hold meetings on a periodic basis (*e.g.*, quarterly) via conference call or video-conference. In addition, college members should be prepared to meet either in person or via telephone or video conference whenever an emergency arises. Each member, by request to the chairperson of the CRA college, should be able to request the initiation of a meeting via conference call or video-conference.

PRELIMINARY RECOMMENDATION

A CRA college should hold at least one in-person meeting per year, as well as periodic conference calls or video-conferences.

5.5 Functions

The primary function of the CRA college is to facilitate the exchange of information between the supervisors of internationally active CRAs in order to foster more effective supervision of these firms. Of course, each supervisor continues to retain absolute autonomy and discretion with respect to supervisory activities and related enforcement actions in its jurisdiction, consistent with national laws.

5.5.1 Information sharing

Sharing information about a CRA would be one of the key functions of a CRA college. It would assist members in effectively supervising affiliates and branches of the internationally active CRA that are within the scope of their oversight responsibility and could facilitate an internationally consistent approach to supervision. However, sharing non-public information between members of a CRA college generally only would be possible if a formal information sharing mechanism is in place, such as a written confidentiality arrangement, a formal access request with assurances of confidential treatment of information, or reliance on existing applicable bilateral or newly negotiated multilateral supervisory MOUs among college members. Mechanisms for assuring the confidentiality of information are discussed in section 5.6 below.

IOSCO believes that the CRA college members would benefit from sharing information about, for example:

- The members' supervisory frameworks and examination methods;
- The CRA's compliance with local or regional laws and regulations;
- The CRA's implementation and adherence to the IOSCO Code;
- The CRA's establishment and operation of rating models and methodologies, internal controls, procedures to manage conflicts of interest, and procedures for handling material non-public information;
- The CRA's business activities;
- The CRA's sources of revenue;
- Strategic initiatives of the CRA;
- Changes in senior management and/or ownership structure of the CRA;
- Material local and/or global organizational developments within the CRA such as changes in corporate structure, business mix, and resources devoted to rating activities; and/or
- The results of thematic (*e.g.*, *sweep*) reviews.

The members of the CRA college would need to endeavor to encourage the flow of information and contribute to it. The flow of information generally could be continuous and timely, as part of an on-going college process, although there is the possibility that it could be a discrete one-off or periodic event. Continuity of the individuals representing the college's participating jurisdictions will be important in order to facilitate the development of trust

between CRA college members and thus the ultimate success of the CRA college in sharing relevant information.

5.5.2 Collective risk assessment

Collectively assessing risks faced or posed by a CRA could be beneficial for members' individual supervisory processes. However, assessing internationally active CRAs' risks might include using and/or sharing non-public information. Thus, information sharing arrangements likely would need to be supported by written confidential safeguards, as discussed above. CRA college members could consult with each other and share risk analysis assessments and information to support the CRA college's collective identification, assessment, and mitigation of risks faced or posed by an internationally active CRA.

5.5.3 Collaboration with regard to supervisory activities

Subject to agreement among CRA college members, a college can be a forum for supervisory cooperation. College members should consider the potential benefits from collaborating with one another as they seek to carry out their domestic supervisory responsibilities, where such collaboration does not conflict with the supervisors' legal requirements and responsibilities. Such benefits may include improvement of the quality of the supervisory assessment of a CRA and better identification of the risks the CRA faces.

For example, a supervisor could identify a relevant supervisory issue or concern with a particular CRA (*e.g.*, employees of one affiliate did not safeguard material non-public information in accordance with the CRA's global policies). The supervisor of the affiliate could invite other college members to take note of that specific issue and examine whether the problem occurs in affiliates located in other jurisdictions so as to determine whether it is a local or group problem. Subject to restrictions on members' legal powers, CRA college members could agree to jointly identify risks affecting a CRA and work together to examine whether the risk is resulting in group-wide problems.

In addition, internationally active CRAs typically develop global policies and procedures that are implemented in local subsidiaries across multiple jurisdictions. However, these policies are tailored, as necessary, to local CRA regulatory requirements. Different supervisory authorities may not be fully aware when a CRA implements different policies in other jurisdictions to account for these variations in legal requirements. A CRA college would provide a forum in which the impact of any jurisdictional differences in a CRA's policies can be understood and discussed.

Finally, collaboration also may serve as a conduit to develop individual supervisory work initiatives and to improve consistency of supervisory approaches. With respect to the latter, supervisors could seek to collaborate, to the extent legally permissible, with regard to their supervisory activities and undertake joint work with other college members (such as thematic reviews and joint exams) in order to increase the efficiency of the supervisory activities of the individual supervisors. Examples of potential thematic work that could be undertaken include: (1) whether affiliates of an internationally active CRA are equally transparent when disclosing their methodologies and other disclosures (*e.g.*, equally transparent in different languages); (2) the adequacy of resources (quantity and quality) dedicated to global functions typically carried out on a cross-border basis (*e.g.*, credit policy development, internal audits, or other internal controls); (3) conflicts of interests arising from the CRA's global structure; and (4) the uniformity of IT infrastructure across offices. Ultimately, the decision on whether to

undertake collaborative work and the focus of the work would be left to the discretion of the CRA college members.

5.5.4 Communication

5.5.4.1 Communication among members

CRA colleges should use all relevant communication channels to facilitate effective information sharing. By and large, communication channels should make exchange of information easy, fast, reliable, and secure. For example, IOSCO maintains secure web-based communication channel (IOSCO’s website for members only). This could be used by CRA colleges to communicate information or the CRA colleges could establish their independent methods of transmitting information on a secure basis.

College members should inform the chairperson of their CRA college of any specific confidentiality arrangements or legal impediments that will adversely impact the communication channels used by the CRA college, so that these issues can be resolved on a best-efforts basis.

5.5.4.2 Communication with individual CRAs

In general, the CRA college’s chairperson would be responsible for communicating with the CRA on the college’s behalf, as it relates to the communication necessary for the operation of the college. This communication will primarily consist of inviting the CRA to make presentations at the college’s annual (in-person) meeting, and making all necessary logistical arrangements. The chairperson also may, in consultation with college members, communicate special requests to the CRA with regard to topics that they wish to address at meetings. The chairperson’s responsibility to communicate with the CRA on behalf of the college is not intended to restrict a supervisor from communicating with a CRA directly in the normal course of exercising its supervisory or enforcement responsibilities under the requirements of its jurisdiction.

5.5.4.3 Communication with IOSCO C6

CRA colleges should report to IOSCO C6 any material findings and issues that IOSCO C6 should consider from a policy perspective. For example, if the college has observed a potential regulatory gap based upon examination results, this should be reported to IOSCO C6 for possible consideration, with recommendations regarding appropriate changes to the principles and standards for CRAs administered by IOSCO C6.

PRELIMINARY RECOMMENDATION

A CRA college should serve as a forum to facilitate: (1) the exchange of information and collective risk assessment among supervisors of the CRA, where appropriate; (2) cooperation with regard to supervisory activities, including possible consideration of conducting thematic reviews of issues of common interest and joint exams and inspections, where appropriate and to the extent legally permissible; (3) in-person presentations from the CRA; and (4) communication to IOSCO C6 of issues that merit a potential policy response.

5.6 Confidentiality safeguards and use of information

As discussed above, the success of a CRA college will depend on its ability to function as a mechanism for the robust exchange of information about an internationally active CRA that is detailed and material to the supervision of the CRA. The lack of formal confidentiality safeguards might impede effective functioning of colleges to the extent it prevents confidential information from being exchanged. Accordingly, each CRA college would need to have in place formal confidentiality safeguards through a written confidentiality arrangement. In some cases, members in the college could have pre-existing bilateral supervisory MOUs with other members that will contain the necessary confidential safeguards. The confidentiality commitments generally should be broad enough to cover the types of information discussed in section 5.5.1.

CRA college members may wish to use non-public information obtained within the college for the purpose of supervising local entities of internationally active CRAs and seeking to ensure compliance with local statutes and regulations. While this information is not gathered for enforcement purposes, CRA college members may want to subsequently use it for law enforcement. In such cases, further use of information should be governed by the terms and conditions of the relevant multilateral or bilateral enforcement MOUs that may exist between or among the supervisors.

It may be less difficult and more efficient to rely on existing bilateral MOUs, where applicable. However, a single, college-specific multilateral confidentiality arrangement would better facilitate and expedite the process of a new member joining the college (*e.g.*, membership could be conditional on signing the college-specific confidentiality arrangement).

PRELIMINARY RECOMMENDATION

Information sharing gateways and confidential safeguards should be established through the development of a multilateral confidentiality arrangement among the members of a CRA college (or when available, through existing bilateral supervisory MOUs between members).

In developing a confidentiality arrangement, the CRA college may take into consideration the confidentiality and permissible uses provisions of the “Annotated sample Memorandum of Understanding” in the IOSCO “Principles Regarding Cross-Border Supervisory Cooperation.”⁸

⁸ IOSCO, *Principles Regarding Cross-Border Supervisory Cooperation*, IOSCO, May 2012, *supra* fn 3, at 44-52.