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The Committee of European Securities Regulators
Credit Rating Agencies Questionnaire

15th August 2006

Dear Sirs

CESR Questionnaire on the day-to-day application of the IOSCO Code by the Credit Rating Agencies

The British Bankers' Association (BBA), the London Investment Banking Association (LIBA) and the International Swaps and Derivatives Association (ISDA) welcome the opportunity to comment on the CESR Questionnaire on the day-to-day application of the IOSCO Code by the Credit Rating Agencies.

As Trade Associations, we are unable to respond directly to the questions outlined in the questionnaire as there is no direct interaction between Credit Rating Agencies and Trade Associations for ratings or associated services, but all our members deal with them and consequently we set out their views below.

Our members consider that in general the application of the IOSCO code by the Rating Agencies has been successful in achieving the objectives of promoting efficient orderly and fair markets. The current situation of self regulation through the IOSCO code should continue.

Key points

Firms consider independent, good quality ratings to be an important factor in the transparency and smooth running of capital markets. As such, our members support CESR's desire not to regulate Credit Rating Agencies and to only consider the processes around the methodologies used and the effectiveness of self regulation rather than try to assess the methodologies themselves.

We would highlight that the questions contained within the CESR paper seem to be directed toward eliciting experience of Credit Rating Agencies' failing to apply the standards within the IOSCO code. There is a significant absence of questions relating to high quality output by Credit Rating Agencies'. Therefore we consider that the questionnaire will not give a

balanced view as to the quality of ratings produced and therefore the potential case for regulation. The majority of the financial services industry appears to have a common view that rating agencies should not be regulated. This is in spite of the fact that firms might on the surface appear likely to have varying (even potentially conflicting) interests in the activities of CRAs. Large houses may include business areas on the 'buy' side, the 'sell' side and straddling the 'buy' and 'sell' sides. There is a majority consensus for self-regulation of CRAs in the financial community.

We suggest the timing of this questionnaire may be a little premature. The proposal to adopt self regulation through application of the IOSCO code was introduced in 2005. Firms have had only 12 months experience on which to give feedback to CESR regarding the operation of the IOSCO code, therefore our members also consider that it would be inappropriate to use the outcome of this questionnaire as a solid foundation for regulatory action. It would seem appropriate to repeat the questionnaire process on the operation of self regulation based on the IOSCO code on an annual basis and that after CESR has collated three years of data to consider the effectiveness of current arrangements.

We would draw CESR's attention to the work being carried out in the US on Credit rating Agencies and would urge a joined up approach to this issue given the recognition that Rating Agencies and the firms they interact with are operating on a global scale rather than just inside the EU.

Other Points

Our members have raised the following key concerns and suggestions we would like to bring to CESR's attention:

1. Unsolicited Ratings:
 - a. Our members believe that unsolicited ratings are a vital tool for new CRAs to build market share and help in overcoming the barriers to entry in this market. CRAs should continue to be able to use unsolicited ratings in an unrestricted fashion.
2. CESR should not seek to regulate the use of ratings triggers in private contracts or require the disclosure of their use. This is an issue that should be left to the market to adjudicate.
3. If a registration scheme is put into place for CRAs, it should not be accompanied with stringent regulations. This will not aid competition in the ratings market. A better course might simply be for there to be a dialogue with agencies and the industry about credit rating issues so that all interested participants are informed about the issues.
4. The provision of ancillary services by CRAs should continue to be allowed within the framework of appropriate conflicts of interests provisions outlined by the IOSCO code.
5. Our members do not support the proposal to regulate the skills and qualifications of rating analysts. CRAs should be free to select staff as they see fit. There are strong reputational incentives for CRAs to employ the most experienced and highly

qualified staff possible. Any sign of compromise on the part of CRAs due, for example, to conflicts of interest, is likely to undermine reputation of the CRA concerned and its reports are likely to be viewed as unreliable. There is no need for extra regulation in this area.

6. Methodology should be a purely market driven process. Intervention by regulators could reduce the confidence investors have in the independence of rating agencies. It will slow down the rating process and innovation in methodologies. There will be significant cost to maintaining sufficient numbers of staff at the regulator with appropriate skills and experience to adequately judge whether the methodology is good quality.
7. Right of appeal: issuers should not have a right of appeal on their ratings. Having a right of appeal implies that there will be a body for the issuer to appeal to. We would not support the creation of such a body. The issuer will already have been given the opportunity to object and or discuss the probable outcome during the ratings process. If the issuer is uncomfortable with the final rating they are able to withdraw their application for the rating to the CRA. Ratings are ultimately the opinion of a private entity and it is crucial the CRAs are able to function independently.

We have further comments relating to the IOSCO Code of Conduct, which will be very helpful to have clarification or consensus, although the CESR's questionnaire does not address specifically those issues

3.3 ...the CRA should disclose to the public, on a non-selective basis and free of charge, any rating regarding publicly issued securities, or public issuers themselves, as well as any subsequent decisions to discontinue such rating, if the rating action is based in whole or in part on material non-public information.

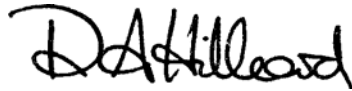
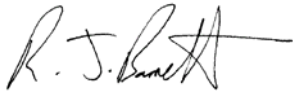
The withdrawal of rating could be considered as the opposite situation to the rating triggers, which have been discussed. There is nothing inappropriate in the CRA discontinuing any rating and to make this public. But if the reason for a sudden credit rating withdrawal (rating action) was disclosed to the public as "due to MNPI" (Material Non Public Information), it may be considered as "tipping" the public while the issuer has not come forward to make such MNPI public, which is required under MAD (Market Abuse Directive). The reason for withdrawal should not be made public.

3.11 Where a CRA is made aware of non-public information of the kind required to be disclosed under applicable laws and regulations, ... the CRA maybe obliged to make this information available to public. ...the CRA should indicate to the issuer its intent to release this information and permit the issuer to immediately disclose this information itself. ...

The disclosure of inside information is the issuer's obligation under the Market Abuse Directive, and the FSA DR 2.2. The CRA should not be confused with this issuer requirement.

We look forward to working with CESR going forwards. Please contact Ross Barrett (ross.barrett@bba.org.uk), Diane Hilleard (diane.hilleard@liba.org.uk) or Ed Duncan (eduncan@isda.org) if you would like to discuss any of the aspects of this letter.

Yours faithfully,



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