

18th June 2010

Mr K-B Caspari
Chair of the Credit Rating Agencies Standing Committee
Committee of European Securities Regulators
11-13 avenue de Friedland
75008 PARIS
FRANCE

Dear Mr Caspari

Moody's Investors Service ("MIS") wishes to thank the Committee of European Securities Regulators ("CESR") for the opportunity to comment on the draft CESR Guidance on the Enforcement Practices and Activities Conducted under Article 21.3(a) of the Regulation ("**the Consultation Paper**").

MIS has the following comments to make on the Consultation Paper:

Enforcement Practices

With reference to paragraph 13 of the Consultation Paper, MIS does not understand the basis on which CESR has decided to consult, and subsequently issue guidance, on routine supervision but will not provide public guidance on its approach to enforcement. Article 21(3)(a) of the Regulation on Credit Rating Agencies ("**the Regulation**") clearly requires CESR to issue guidance on enforcement practices which CESR has expanded to include supervisory guidance. We are concerned with this extension to the scope of the Regulation, but are even more concerned that CESR has chosen to substitute the requirement to publish guidance on enforcement to a requirement to publish guidance on supervisory activities. It is necessary that market participants, who might be subjected to regulatory enforcement action, have certainty as to the process that will be followed by regulators. We would urge CESR to reconsider its decision to keep its guidance in this area private.

Supervisory teams will be inappropriately focused on the content of rating actions and methodologies

The Consultation Paper fails to recognise the need to establish a supervisory framework that imbeds the principle of non-interference "with the content of credit ratings or methodologies" (Article 23(1) of the Regulation) while nevertheless providing supervisors with the information necessary to monitor rating processes. Given the powers available to the supervisors, it is important that the guidance actively discourages supervisory teams from second-guessing the rating opinion of a credit rating agency ("**CRA**").

In this regard, paragraphs 14 and 17 of the Consultation Paper focuses data collection on rating activity and the methodology output. In our view, this type of data (for example, an increase in the number of

upgrades/downgrades or a change in methodology) should not trigger supervisory activity. Instead supervisory activity should be triggered by the reports received from the core internal control functions designed by the Regulation to promote ratings quality (for example, the internal review function, the compliance function and the independent members), the annual transparency report required under Article 12 of the Regulation and the reporting of material changes to the documentation submitted as part of the registration process as set out in paragraph 19. The appendix will need to be adjusted accordingly.¹

The role of the Colleges of Supervisors is not identified

MIS is disappointed that the Consultation Paper does not include a section on the role of the College in setting on-going supervisory priorities. For the application process, both the Regulation and CESR's guidance provided clarity as to the role of the College, the Home State competent authority and Host State competent authority. However, in the case of on-going supervision, there is no clear explanation as to the role of the College in terms of receiving information from a group of CRAs and managing supervisory interaction. We recognise that the Consultation Paper suggests that consideration will be given to the group nature of some CRAs and we would encourage CESR to provide greater clarity as to how this will work in practice.

Proportionality of routine supervision

If all the requirements set out in the Consultation Paper were applied at a Home State competent authority level, MIS would be faced with 138 routine regulatory meetings a year, of which nearly a half would be at a senior management level. This would be overly burdensome to a group such as MIS.

Furthermore, in terms of the amount and frequency of information, together with the level of interaction expected, MIS is concerned that CESR is proposing a supervisory approach that is onerous and potentially inefficient. In particular, we note that:

- CESR has established a reporting framework through the CEREP for historic ratings data while at the same time setting up a new monthly reporting requirement for ratings data for supervisory purposes. This introduces duplication which is not merited for supervisory purposes;
- CESR is requesting monthly financial data. While this might be appropriate for a bank, financial market or investment firm, MIS sees little supervisory benefit in a monthly monitoring of a CRA's financial data given the different, non-trading and non-deposit/client money taking role, that CRAs have in the market.
- Monthly compliance reporting coupled with monthly meetings with the compliance officers on a subsidiary-by-subsidary basis is a heavy routine burden.

We strongly urge CESR to consider at least a quarterly cycle for the provision of routine supervisory information with a meeting schedule that is suitably aligned to the provision of this information. Such a reporting cycle would of course be backed-up by the ad hoc reporting already required under the

¹ We note that paragraph 14 also requires standard information on "any changes to the organisation". In our view this would be best dealt with under the ad hoc reporting identified in paragraph 19.

Regulation and under this Guidance as well as by the availability of the opinions of the independent members of the boards.

Verbal requests for information

Paragraph 9 of the Consultation Paper states that “requests for information may be made in written format as well as verbally at any time.” In our view, verbal requests are not appropriate for matters that are either complex or require precision.

Thank you for providing MIS with this opportunity to comment on the Consultation Paper. Please do not hesitate to contact me if you have questions regarding this submission or MIS more generally.

Yours sincerely

A handwritten signature in black ink, appearing to read 'F. Drevon', with a horizontal line underneath the name.

Frédéric Drevon
Senior Managing Director
Head of Europe, Middle East and Africa (“EMEA”)