

BdRA e.V. • Lindenstraße 38 • 81545 München

Ms Ingrid Bonde  
CESR Committee of European Securities Regulators  
11-13 avenue de Friedland

75008 Paris  
France

January 28, 2005

**CESR's technical advice to the European Commission on possible  
measures concerning credit rating agencies - Comments on the Call for  
Evidence from CESR**

Dear Ms. Bonde,

the BdRA Bundesverband der Ratinganalysten und Ratingadvisor e. V. (BdRA) is the Federal Association of Rating Analysts and Rating Advisors in Germany. The association was founded 1999 as „Rating Cert e. V.“ and was renamed in March 2004 once it became clear that BdRA is the representing rating analysts and rating advisors from all over Germany. We believe that it is up till now the only association of its kind in Europe, comprising rating professionals both from various rating agencies and rating advisory companies. The association is representing more than 300 members.

The association aims at the development of the job descriptions, occupational image and education of rating analysts and rating advisors. By contributing to national and international organizations, it is the intention to promote a high, internationally recognized quality standard for rating procedures and practices. Furthermore, BdRA is promoting the idea of a good rating culture in public. An affiliate of BdRA, Rating Cert GmbH, is certifying rating analysts and rating advisors and is accrediting study paths and rating organizations.

BdRA welcomes the opportunity to comment in CESR's consideration of the important issues which have arisen in recent years concerning the group of rating organisations which play a significant and growing role in the global capital market. We are referring to CESR's technical advice to the European Commission on possible measures concerning credit rating agencies, Consultation Paper November 2004, which was published on [www.cesr-eu.org](http://www.cesr-eu.org).

**INTRODUCTION**

The term “unsolicited ratings” is used in CESR's paper from different perspectives. BdRA agrees that the question of unsolicited ratings is linked to the entry barriers discussion. Nevertheless, BdRA stresses the fact that issuing unsolicited ratings are not only a means to entrants to the ratings industry as a way to gain credibility in the market. Since rating agencies are not only serving

Geschäftsstelle München:  
Lindenstraße 38 •  
81545 München  
Tel: (089) 6 51 03-292  
Fax (089) 6 51 03-295  
[info@bdra-ev.de](mailto:info@bdra-ev.de)  
[www.bdra-ev.de](http://www.bdra-ev.de)

Geschäftsführer:  
Armin Jäger  
Büro:  
Schleiermacherstr. 11/1  
71229 Leonberg  
Tel: (07152) 33 29 710  
Fax: (07125) 94 83 88

Vorstand:  
Dieter Pape  
Dr. Oliver Everling  
Ralf Garrn  
Dr. Hanspeter Maute  
Erwin Röslmair  
Prof. Dr. Ottmar Schneck

Vereinsregister:  
Berlin-Charlottenburg  
18475 Nz

Bankverbindung:  
HypoVereinsbank  
(BLZ 710 221 82)  
Konto-Nr. 6 310 202 426

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, BdRA does not see questions arise such as the need to disclose this fact, as is stated in CESR's paper.

BdRA supports the public interest to know who takes the initiative. Nevertheless, 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.

CESR rightfully assumes that 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 ratings 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.

The designation "unsolicited" might degenerate to a mere marketing tool if required officially by some supervisory body. BdRA does not see how CESR could propose to define an unsolicited rating as a credit rating produced by a credit rating agency on its own initiative therefore.

## COMPETITIVE DIMENSION REGISTRATION AND BARRIERS TO ENTRY

The many uses of credit ratings in private contracts in Europe as well as the foreseeable uses of ratings in European legislation leave no choice: In any such uses relevant ratings of relevant rating agencies have to be defined. Especially in cases like such of the Bond sentence 1993 it must be clear which ratings of which rating agencies would be inalienable to disclose to the advised investor. If there are no rules how to identify relevant ratings, the legal uncertainty could be facilitate abuse.

BdRA believes that the encouragement and recognition of self-regulating bodies like the BdRA are to the advantage of the rating industry and would not rise, but lower barriers to market entry for reputable new rating agencies. Recent experience with dubious creations of rating agencies shows the difficulties of reliable new rating agencies to differentiate themselves from the dubious ones. The beneficiaries of a totally unregulated rating market are only the two or three leading rating agencies, since their reliability and good practice are for most market participants beyond question.

## RULES OF CONDUCT DIMENSION

We believe that conflicts of interest should be made more transparent by credit rating agencies. This requirement would be especially relevant for agencies whose shareholders are institutional investors in the financial markets.

For BdRA, it is a must to differentiate among rating analysts and rating advisors. Although both groups have many commonalities, the best preparation to the rating process could never credibly be done by the same persons and organizations that are deciding and publishing the outcomes of the rating processes. Rating agencies should confine themselves to rating and should not ogle with ancillary services which could involve conflict of interests.

BdRA encourages its members to disclose levels of skills of agencies' staff such as qualifications as "Certified Rating Analyst". BdRA also recommends publishing methodologies used for building credit ratings. Since bank internal ratings are competing to some extent with external ratings of External Credit Assessment Institutions, disclosure rules for rating agencies should be in line with disclosure rules for banks.

The names of rating analysts working for rating agencies should be disclosed. Confidentiality of information does not allow visitors to inspect the bureaus of rating agencies, and rating committee compositions are usually not disclosed as well. Therefore more transparency on who is involved in the rating processes and on how many analysts qualify as Certified Rating Analysts is strongly advisable.

We hold the opinion that certain minimum standards for the qualification of rating analysts should be defined. In addition, certain transparency standards regarding the qualification of rating analysts should be mandatory.

## REGULATORY OPTIONS CONCERNING REGISTRATION AND RULES OF CONDUCT FOR CREDIT RATING AGENCIES

We consider growth of credit ratings and rating agencies in Europe as the overriding element of a good rating culture. The choice of any regulatory option should be conditioned by the aim to allow and foster competition in the rating market. Special treatment should be given to rating agencies pioneering into new markets such as the market for ratings on small and medium sized companies. Rating agencies could play an invaluable, groundbreaking role in opening up new markets, as has been proven by many cases of securitizations, just to give an example.

BdRA relies on the self-regulation. Priority should be given to the self-regulation of the rating industry, so that local or specialised agencies have a fair chance to enter competition. Nevertheless, some standards have to be put into force by peer reviews legitimated on EU level. Practices and procedures of recognized rating agencies should be controlled in a similar way as the practices and procedures of chartered accountants.

Sincerely,  
Bundesverband der Ratinganalysten und Ratingadvisor e.V.  
Der Vorstand