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**Response to the Consultation Paper relating to Additional Level 2 Implementing Measures
for the Market Abuse Directive**

1. Moody's Investors Service Limited (Moody's) welcomes this opportunity to respond to the Additional Level 2 Implementing Measures Consultation Paper (the Draft)¹ prepared by the Committee of European Securities Regulators (CESR) regarding advice to the European Commission (the Commission) for the Market Abuse Directive (the Directive).²
2. As Moody's has stated in our previous correspondences with both the Commission³ and CESR,⁴ we strongly advocate measures that bolster investor confidence and enhance transparency in the European market. In relation to the current Draft, we have certain key concerns with the manner in which the Directive has been interpreted by CESR. We take this opportunity to share with CESR our primary concerns.

¹ Market Abuse Additional Level 2 Implementing Measures - Consultation Paper, April 2003. Ref: CESR/03-102b.

² Directive 2003/6/EC of the European Parliament and of the Council on Insider Dealing and Market Manipulation

³ Moody's Response to the Director General Internal Market Services' Working Document on the Implementation of the Market Abuse Directive, dated 30th April 2003.

⁴ Moody's Responses to CESR's first and second consultation papers relating to advice on the possible level 2 implementing measures for the proposed Market Abuse Directive, dated November 22nd 2002 and September 30th 2002 respectively.

3. Moody's would submit that including rating agencies amongst those entities which are required to keep insider lists is unnecessary for two primary reasons:

- 1) **Moody's does not act "on behalf of the issuer."** Although rating agencies are remunerated by issuers, rating agencies do not fall in the same class of entities listed by CESR⁵ that act on "behalf of" or for the "account of" the issuer. Rather, Moody's acts "on behalf of the investor." Rating changes are at times in direct conflict to the issuer's wishes. One of Moody's core tenets is:

The level of rating that Moody's assigns to an issuer is affected neither by the existence of a commercial relationship between Moody's and the issuer, nor by the nature of that commercial relationship.

Consequently, although paid by the issuer, rating agencies are unlike other entities listed by CESR in paragraph 62 of the draft, as rating opinions ultimately serve a public interest rather than the issuer's interest.

- 2) **Appropriate processes already in place.** The underlying premise of maintaining an "insider list" within the context of the Market Abuse Directive is to better control and monitor the flow of inside information, and thus assess those instances where insider trading has occurred. As CESR has noted, the "Directive invites economic actors to define procedures aimed at preventing the undue circulation of inside information." As an organisation, Moody's has in place processes that protect and guard against the misuse of all confidential information, without a further analysis of whether that information is "insider" in nature within the context of the Directive. We have provided in **Annex 1** a list of our procedures. We would suggest that CESR and the Commission advocate the adoption of these procedures for the rating agency industry, instead of including rating agencies in the list of entities obliged to maintain insider lists.

4. On a practical level, Moody's is concerned that the imposition of the insider list will create two potential obstacles for rating agencies:

- 1) **Issuer best placed to assess what is "inside information."** Should CESR disregard our discussion as to why it is neither appropriate to include rating agencies as an enumerated entity, nor efficient to mandate that rating agencies maintain lists, we would assert that CESR should clarify those circumstances where we would be required to create and maintain a list. The Directive has very clearly placed the burden of disclosure of "insider information" on the issuer. This burden flows from the understanding that only the issuer has comprehensive and accurate first-hand knowledge of all the data specific to it. Only the issuer can identify and make the appropriate decision as to what is "inside information" within the meaning of the Directive.

⁵ The Draft prepared by CESR, Paragraph 62.

2) Dampen Issuer-Rating Agency Communication. An unintended consequence of the proposed requirements may be to dampen the communication between issuers and rating agencies if issuers are obliged to indicate which pieces of information are "insider" within the meaning of the Directive and which are not. The identification of what is "insider" information is properly placed within the ambit of the issuer's duty. The issuer will also have to maintain the list which may prove to burdensome for it to upkeep, and may instead err on the side of caution and refuse to inform rating agencies of potential confidential or insider information. Moody's understands that the purpose of creating an obligation to draw up an insider list is to prevent and monitor any insider dealing or wrongful trading. As such, we would urge CESR to correlate the circumstances in which the regulator may seek the list with the aim underlying the duty. Thus, issuers will be aware that the contents of the list may be exposed during the course of an investigation of insider dealing, but not for other purposes.

6. Moody's appreciates this opportunity to participate in CESR's consultation process. Should you wish to discuss the contents of this or any of our previous submissions, we would be happy to meet with you at your convenience.

Yours sincerely

s/s Michael R. Foley

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MOODY'S INVESTORS SERVICE, LTD.

Annex 1

Moody's Internal Procedural Safeguards Protection of Confidential Information

- Structural policies and procedures
 - i. **Prospective Rating Change** - Analysts are prohibited from selectively discussing any future rating actions with any third party, including subscribers, investors, or the media.
 - ii. **Issuer specific confidential information** – Without the permission of the issuer, analysts are prohibited from publishing or in any way discussing non-public information received from issuers with third-parties.
 - iii. **Disclosure prohibition.** Analysts are required to sign a confidentiality agreement, ensuring that they are aware of the requirement not to disclose any confidential information to any third party.
 - iv. **Data protection and integrity** - Moody's has recently introduced, on a system-wide basis, a means of automatically "locking" all employees' computer screens (thus preventing unauthorized access) after 30 minutes of inactivity. Logging onto the internet is monitored on a daily basis. Remote access to Moody's server is highly restricted through the use of password protection and a "virtual private network" software system.
- Measures relating to Moody's physical premises
 - i. **Access to the building** - Only Moody's employees, with a valid identification card, have unrestricted access to the Moody's offices.
 - ii. **Outside visitors** - Upon arriving at Moody's reception area, all visitors to Moody's are directed to Moody's "public meeting" rooms, where analysts meet them.
 - iii. **Physical security measures** - Documents are stored, in the first instance, in the analysts' offices and on their computers. Analysts' computers, particularly laptops, are required to be locked and secured.
- Securities trading policy
 - i. **No conflicts with respect to the trading or ownership of securities.** As a matter of policy, apart from holdings in diversified mutual funds, Moody's analysts are not permitted to:
 - buy or sell a security if the analyst is aware of non-public and material information relating to the security or the issuer of the security;
 - buy or sell any security of an entity within the analyst's assigned area of primary analytic responsibility. An employee has primary analytic responsibility for any entity rated by the employee's industry team; or
 - own any security that could be affected by a rating action in which the employee directly or indirectly participates.
 - ii. **Trading restrictions.** Analysts are required to refrain from trading securities based on non-public information and to submit securities' trading compliance

forms on a quarterly basis. The completion and content of such forms is monitored internally.

- iii. **Quarterly Compliance Certificate.** Moody's employees are required to submit a signed "Quarterly Compliance Certificate" no later than 10 days after the end of the quarter. This constitutes an acknowledgement by the employee that they have read, are aware of and agree to comply with Moody's policies regarding securities trading.

➤ Employee training and awareness

As part of Moody's credit training program, which was instituted in the past several months, the importance of maintaining the confidentiality of non-public information will be further reinforced and analysts will be reminded of the appropriate handling of such information.