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Dear Sir / Madam,

A.M. Best – Response to ESMA Consultation Paper on CRA 3 Implementation

I am writing to provide comments on behalf of A.M. Best Europe – Rating Services Limited (AMBERS) regarding the above Consultation Paper which was published by ESMA on 11 February 2014.

At a high level, AMBERS would observe that the proposals represent a further restriction on competition within the credit rating sector given that the enhanced administrative costs which smaller and medium sized credit rating agencies (CRA) will disproportionately incur will outweigh any benefits resulting from the proposals. However, whilst AMBERS feels there are certain areas where the CRA 3 proposals have been gold-plated (e.g. the requirement to include press releases on the European Platform), AMBERS believes that the key failings are with the primary legislation itself.

1. Draft RTS on Information on structured Finance Instruments (Q1 -20)

AMBERS does not currently provide ratings on Structured Finance Instruments and therefore has no comments on this section.

2. Draft RTS on the European Rating Platform (ERP)

As a general principle, AMBERS is supportive of enhanced transparency regarding information on ratings, outlooks and related actions. However, AMBERS has a number of practical questions regarding the manner in which the ERP will be implemented and looks forward to working with ESMA over the coming months to resolve these issues. Of particular concern are the proposals to capture LEI fields where AMBERS feels the practicalities of obtaining this information are uncertain both for the regulator and the industry. Similarly AMBERS has concerns regarding the comparatively short time-frame of just three months which ESMA is proposing is appropriate for firms to provide historical data dating back 10 years. Finally, AMBERS is concerned that the implementation timetable may prove unduly aggressive. In order to resolve these concerns (and other issues of a similar nature), AMBERS would stress the need for a soft launch of the new reporting framework with detailed testing periods and technical round tables prior to formal introduction. Such round tables should take place in advance of formal Commission approval of the proposals so as to maximize the time available for CRAs to adapt to the new requirements.

Q1 Do you agree with the frequency of reporting?

AMBERS has no further comments regarding the proposed frequency of reporting.

Q2 Do you agree with the choice of including also press releases and sovereign rating reports in the ERP?

As stated in AMBERS' response to the original Discussion Paper, we remain unclear as to the basis upon which ESMA has determined that the inclusion of press releases in the ERP is required to fulfill its legislative mandate. AMBERS does not feel that the Consultation Paper adequately explains the basis upon which ESMA has rejected industry representations on this point and would share the view that the proposals represent "gold-plating" of Article 11a(1).

As outlined above, AMBERS is supportive of enhanced transparency regarding ratings information but in this particular instance feels that the proposals to include press releases on the ERP will incur additional IT and administrative costs for very marginal benefits given press releases are freely available on CRA websites. Given each of the CRA responses to the Discussion Paper suggested the possibility of including hyperlinks from the ERP to relevant websites, AMBERS would urge ESMA to give further consideration to this suggested compromise.

3. Draft RTS on Fees Charged by CRAs to their Clients

AMBERS would repeat the observation made in its response to the original Discussion Paper that the primary legislation in this area is fundamentally flawed and contradicts the principles of free trade upon which the European Union is founded. Moreover, contrary to the expressed intention of the relevant recital, AMBERS believes that the impact of the proposals will be to further undermine competition in the CRA sector. The proposals have absolutely no impact on the management of conflicts of interest given that the separation of analytical staff from pricing matters already provides an appropriate control. Consequently the reality is that all these proposals achieve is to enhance significantly administrative costs for all market participants and to reduce the ability of smaller agencies to demonstrate flexibility in their pricing approach.

AMBERS was also concerned by a number of statements made by ESMA in the original Discussion Paper. For example, certain assumptions were made regarding price negotiation and internal costs which were unfounded and at odds with standard business practice. There also appeared to be no appreciation of the fact that strategic / investment costs are a fundamental component of pricing. It is noticeable that the Consultation Paper appears to move away from a number of these statements. However, there remains a considerable degree of uncertainty as to how ESMA will apply the regulations in this area.

Q1 Do you agree with the proposed approach? If not, and given the existing legal framework, please suggest an alternative or alternatives giving reasons.

As outlined above, AMBERS fundamentally disagrees with the proposed approach but accepts that this is mainly a consequence of the failings of the primary legislation and therefore the existing legal framework provides limited room for alternatives.

Whilst AMBERS is unable to provide an alternative framework, we do have a number of practical issues regarding the application of the new reporting framework which are not covered in the Consultation Paper and where we would welcome further clarification. For example:

- As part of an international group, AMBERS occasionally provides rating services where the fee was negotiated by another (non-ESMA regulated) entity within the Group. It is unclear what reporting is required in this situation.
- Similarly it is not clear, what reporting, if any, is required for any endorsed ratings.

Q2 Do you agree with the proposed tables and information required? Please explain and should you not agree with any of the fields, please suggest alternatives, giving reasons for the suggestions.

AMBERS is unclear as to the scope of information required within Table 4 of Annex 1 and in particular feels that further clarity is required regarding the extent to which the reporting requirements will be extended to non-ESMA regulated entities within the CRA group and the definition of ancillary services.

At present AMBERS generates 100% of its revenue from ratings services with no revenue being generated from other products or services. However, the wider A.M. Best Group generates revenue from other products and services not related in any way to the provision of ratings services and not categorised as "ancillary services" as defined in Paragraph 4 of Section B of EC 1060/2009 (as amended by EU 462/2013):

> "Ancillary services are not part of credit rating activities; they comprise market forecasts, estimates of economic trends, pricing analysis and other general data analysis."

There is no relationship or link whatsoever between the rating fees generated from AMBERS' clients and any other products / services provided by the wider Group. AMBERS' working assumption is that such revenue does not need to be reported and, given the absence of any form of fee relationship, such reporting would be disproportionate. However, AMBERS believes that the RTS should explicitly state that revenue does not need to be reported where it is generated from activity that does not meet the definition of "ancillary services" stated above.

Secondly, as a subsidiary of an international group, one interpretation of the Consultation Paper would be that ESMA could potentially, dependent upon the interpretation of ancillary income, require reporting in respect of revenues generated by A.M. Best's businesses in the US and Hong Kong. For example, if any part of the AMB Group (whether based in the UK or elsewhere) began to embark upon "ancillary services", this would appear to trigger the reporting requirement which would be nonsensical where there is absolutely no relationship with any rating fees.

For the other tables, AMBERS believes that it should be able to populate each of the required data fields. However, AMBERS would suggest that reporting should be allowed in any of the currency units in use across the European Union and not just the Euro. As with the ERP, AMBERS would again recommend a soft launch and an extensive testing period as part of the implementation process.

I trust that the above comments will be of value. Please do not hesitate to contact me should you require clarification on any of the points we have made or should you have any other queries.

Yours sincerely

Roger Sellek

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Chief Executive, A.M. Best Europe – Ratings Services Limited