



*Insight beyond the rating.*

November 27, 2009

Committee of European Securities Regulators (“CESR”)  
Via email

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**Re: Consultation Paper on Guidance on the registration process, the functioning of colleges, the mediation protocol, information set out in Annex II, information set for the application for certification and for the assessment of credit rating agencies (CRAs) systemic importance (“Consultation Paper”)**

Dear CESR:

DBRS appreciates the opportunity to provide its comments on the Consultation Paper.

As a member of CESR’s Consultative Working Group (“CWG”)<sup>1</sup>, DBRS provided comments on various pre-consultation papers in September 2009. Based on the feedback it received, CESR produced this Consultation Paper.

DBRS’ comments are provided to ensure there is clarity in the application process and regarding ongoing requirements and supervision. DBRS has not provided comments on areas for which additional clarity and guidance is not required.

## **DBRS Comments**

### **Confidentiality**

It is not clear from the Consultation Paper how confidentiality of a CRA’s registration application will be ensured from the outset and maintained during the registration process, across the CRA’s college of national competent authorities (“college”) and outside the college. In addition to clarity on confidentiality, DBRS seeks to understand if there is anything specific it should do regarding its application to ensure such confidentiality.

### **Regulatory sharing of information**

The Consultation Paper does not discuss the process, protocols or confidentiality of sharing information and reports regarding a CRA applicant (in the case of endorsement or

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<sup>1</sup> The CWG provides ongoing advice relating to the implementation and application of the European Union Regulation on Credit Rating Agencies (“EU CRA Regulation”) and the related rules and guidance.



equivalence) between the home competent authority, the college and/or CESR and with regulators outside the EU during the registration process and subsequent periods.

### **Guidance on endorsement**

Article 4.3 (b) of the EU CRA Regulation states that a CRA may endorse a credit rating issued in a third country only when the CRA is able to demonstrate that the credit rating activities resulting in the issuing of the credit rating to be endorsed fulfill requirements at least “as stringent as” the requirements specified in Articles 6 to 12. The guidance does not provide clarity regarding the term “as stringent as”.

DBRS suggests the use of constructive interpretation be applied to this requirement such that “as stringent as” does not mean “exactly as” but rather “similar to” to ensure effective functioning of the endorsement regime for third country CRAs.

### **Assessment and decision on the completeness of the application for registration**

With reference to questions 6-8 on pages 11-12, DBRS seeks clarification as to whether the assessment of the completeness of the registration application is contemplated as an iterative approach. That is, does the assessment process include ongoing dialogue with the home competent authority (that coordinates with the college of national competent authorities) and the submission of additional information to ensure for a complete and comprehensive application? Where additional information is provided, would the 25 working day period be reset each time?

DBRS suggests that there should be some flexibility regarding the assessment of completeness of an application and that a “qualified registration approval” approach be considered. DBRS suggests that a CRA who has submitted a substantively complete registration application could receive a positive “subject to” decision that specifies what additional information must be provided within a certain streamlined time frame.

### **Notification of the decision of registration, refusal of registration or the withdrawal of registration of a CRA**

With reference to question 13 on page 15, the positive registration decision of a CRA applicant and the criteria for such registration should be published to ensure transparency of the process. However, the publication of the refusal of a CRA’s registration application and the reasons for such refusal could have serious business and cross-jurisdictional impact noting that a CRA may plan to appeal the refusal decision or re-apply at a later date.

With reference to question 12 on page 14, a CRA should be provided with a confidential written decision that fully sets out the reasons for such refusal and the substantive issues that the CRA would need to address to enable the CRA to appeal the decision or re-apply.



### **Process for a refusal decision, for an appeal of a refusal decision and for exemptions not granted**

The EU CRA Regulation sets out a process for a refusal decision of a CRA (“refusal decision”) at a broad level as well as a mediation protocol and mechanism for national competent authorities but it does not set out a process for the appeal of a refusal decision nor for exemptions under Article 6.3 (“exemptions”) requested by a CRA that are not granted. In addition, the Consultation Paper does not provide detail on the refusal decision process nor does it address an appeals process for refusal decisions and for exemptions.

DBRS respectfully submits that guidance on the process for a refusal decision be drafted and that an appeals process for refusal decisions and exemptions be established with accompanying guidance as to how it would work at the home competent authority, college and/or CESR levels, as applicable. DBRS also suggests that a CRA with External Credit Assessment Institution (“ECAI”) recognition would maintain its ECAI standing without prejudice during the appeals process.

### **Transparency Report and timing for submission and publication**

With reference to question 29 on page 25 and Article 12 of the EU CRA Regulation, it is not clear when the annual Transparency Report should be published. Specifically, DBRS seeks clarity as to whether this report would form part of the CRA’s registration application or would it only need to be published in the year following a positive registration decision.

### **General guidelines on the information to be submitted re: ECAI**

With reference to question 39 on page 38, DBRS suggests that it would be useful to add the ECAI information requirements to the guidance to the extent the requirements are different than those for the registration of a CRA under the EU CRA Regulation. In addition, the guidance should outline any specific additional requirements for CRA applicants who have ECAI recognition at the time of registration.

### **Guidance on requests for historic data and information**

With reference to question 40 on page 38, DBRS respectfully submits that CESR should not require that historic data and information for any of the highlighted bullet points (in italics and contained in square brackets) be supplied with the registration application.

In a number of instances, the Consultation Paper suggests copies of information and data for a three year retrospective period. DBRS notes that there is no existing requirement to maintain this information on the cited areas in the first instance. Therefore, to request the information on a historic basis would cause CRAs to incur substantial additional cost to reconstruct the information without significant benefit and also pose a significant barrier to



entry for new CRAs. Rather, only current information and data in place at time of registration should be supplied.

DBRS would be pleased to further discuss any of the matters raised herein and/or provide additional information. Please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mary Keogh". The signature is fluid and cursive, with a large initial "M" and "K".

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