

*Insight beyond the rating.***CONTACT INFORMATION**

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## SEC Extends Exemption to Rule 17g-5 for Non-U.S. Issuers

On November 23, 2010, the U.S. Securities and Exchange Commission (SEC) extended the temporary conditional exemption for nationally recognized statistical rating organizations (NRSROs) from complying with Rule 17g-5(a)(3) (the Amended Rule) with respect to structured finance products or instruments (collectively, SF instruments) issued by non-U.S. issuers outside the U.S. market. The exemption has been extended from December 2, 2010, until December 2, 2011 (the Extended Order).<sup>1</sup>

Below, DBRS outlines its approach to compliance with the Extended Order and, to assist in market clarity, recaps its approach to other areas of the Amended Rule as outlined in prior press releases.<sup>2</sup>

The Amended Rule relates to credit rating agencies (CRAs) that are registered with the SEC as NRSROs and hired by issuers, sponsors or arrangers (collectively, the Arrangers) to assign credit ratings to SF instruments. The Amended Rule prohibits an NRSRO from issuing or maintaining ratings on certain SF instruments unless the following requirements are met:

- Hired NRSROs disclose on a password-protected website to any non-hired NRSRO certain information about the SF instrument(s) they are engaged to rate.
- Arrangers make available on a password-protected website all information they provide a hired NRSRO to any non-hired NRSRO that wishes to access that information.

### *Approach for Exempt SF Instruments until December 2, 2011*

Further to the SEC's Extended Order, ratings of SF instruments issued by non-U.S. issuers where DBRS has a reasonable basis to conclude the SF instrument will not be sold into the United States will be exempt from compliance with the Amended Rule until December 2, 2011. If transactions are found not to be exempt and the requirements for the Amended Rule are not followed, DBRS will be prohibited from issuing or maintaining a credit rating with respect to that SF instrument.

### *Application to ABCP Ratings*

DBRS applies the Amended Rule to all asset-backed commercial paper (ABCP) programs, including those to which DBRS assigned an initial credit rating prior to June 2, 2010, unless the conditions in the SEC's Extended Order are met. In the case of an existing ABCP program initially rated before June 2, 2010, an Arranger would be deemed responsible for posting and maintaining on the relevant password-protected website the information described in paragraphs (a)(3)(iii)(C) and (a)(3)(iii)(D) of the Amended Rule if it posts and maintains on such website the following information:

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1. Refer to November 23, 2010, Securities and Exchange Commission (SEC) Order Extending Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g-5 under the *Securities Exchange Act of 1934* and Request for Comment at <http://www.sec.gov/rules/other/2010/34-63363.pdf>.
  2. Prior Press Releases:
    - (1) September 7, 2010: [DBRS Confirms Application of Amended SEC Rule 17g-5 on Structured Finance Ratings to ABCP Ratings Prior to June 2, 2010](#).
    - (2) June 2, 2010: [DBRS: Further Update on Implementation of Amended SEC Rule 17g-5 on Structured Finance Ratings](#).
    - (3) May 21, 2010: [DBRS: Update on Implementation of Amended SEC Rule 17g-5 on Structured Finance Ratings](#).



(1) **Historical Information:** On the date that NRSROs are first required to comply with the amendments to Rule 17g-5 with respect to existing ABCP programs initially rated before June 2, 2010, as discussed below (such date, the Compliance Date):

- All ABCP program documentation in its then-effective form, including but not limited to (as applicable) the conduit organizational documents, the administration agreement, the security agreement, the management agreement, the investment guidelines, the program-wide credit enhancement documentation, the form(s) of liquidity agreement to be entered into in connection with the acquisition of each asset and the opinions delivered in connection with the establishment (or most recent restructuring) of the ABCP program.
- A copy of the most recent report of all assets then owned by the ABCP conduit, identifying the issuer of each asset, the type of asset and comprehensive data on the performance of each asset (i.e., the same report that each ABCP conduit currently provides to the hired NRSROs on a monthly basis).
- All offering documents in their then-current forms used in placing the ABCP.

(2) **Prospective Information:** After the Compliance Date, all information the Arranger of the ABCP program provides the hired NRSROs or contracts with a third party to provide to the hired NRSROs for the purpose of undertaking credit rating surveillance of the ABCP at the same time such information is provided to the hired NRSROs, in accordance with the provisions of Rule 17g-5(a)(3)(iii)(D), as interpreted by the SEC and its staff from time to time.

In the case of historical ABCP information, DBRS believes the above-noted approach is a practical way of achieving compliance with the Amended Rule. In the case of prospective information, sponsors of ABCP programs would post and maintain all information provided to hired NRSROs for the purposes of undertaking surveillance of ABCP ratings.

### *Approach for Non-Exempt SF Instruments*

DBRS considers a rating engagement to be initiated when DBRS has a signed letter of engagement (LOE) or an Arranger requests in writing for DBRS to begin analyzing a transaction; when an Arranger has provided sufficient written information or documentation for the analytical process to begin; and when DBRS agrees to undertake that work. Sufficient information would include a written description of the transaction terms to be analyzed and/or a written description of specific collateral characteristics to be analyzed.

If an Arranger wants to obtain a rating on an SF instrument, DBRS expects an Arranger to execute and return to DBRS a standard agreement (the Representation Agreement) that contains, among other things, written representations that address criteria set out in the Amended Rule as follows:

- (1) The Arranger will maintain an identified password-protected website.
- (2) The Arranger will provide access to its password-protected website during the calendar year to any non-hired NRSRO that provides it with a copy of the certification described in the Amended Rule.
- (3) The Arranger will post on its password-protected website all information for purposes of determining the initial credit rating and/or undertaking rating surveillance at the same time as this information is provided to DBRS.
- (4) The Arranger will maintain the information it is required to make available on its password-protected website in a manner indicating which information should be relied on to determine or monitor the credit rating.



The Amended Rule prohibits DBRS from issuing or maintaining a credit rating for an SF instrument unless it obtains the Representation Agreement.

Once DBRS receives the Representation Agreement, DBRS will post on its password-protected website the SF instrument(s) it has been hired to rate and the link to the Arranger's password-protected website for access by non-hired NRSROs. The Arranger must comply with the Representation Agreement as long as the SF instrument to which any credit rating applies is outstanding. If an Arranger fails to comply with the Representation Agreement, DBRS will be prohibited from issuing a credit rating for an SF instrument. If DBRS becomes aware that the Arranger is not complying with an existing Representation Agreement, DBRS may withdraw a previously assigned credit rating.

DBRS may also consider whether an Arranger's conduct means that DBRS cannot reasonably rely on any aspect of the Representation Agreement with respect to other credit ratings of SF instruments that DBRS has already issued or is in the process of analyzing or determining.

### ***Information to Be Posted by the Arranger on Its Password-Protected Website***

The Arranger must ensure it posts on its password-protected website all information that it provides to DBRS or contracts with a third party to provide to DBRS for the purposes of determining the initial credit rating for an SF instrument or for undertaking surveillance of that credit rating. DBRS is not in a position to advise Arrangers about what information must be posted on the Arranger's website for an initial rating or for surveillance purposes.

To ensure compliance with the Representation Agreement, DBRS requests the Arranger not provide new information orally to DBRS. Rather, the Arranger should post all new information on its website at the same time as it provides it to DBRS. Discussions between the Arranger and DBRS about the application of DBRS methodologies that do not relate to a transaction or a potential transaction would not need to be posted.

DBRS expects Arrangers that wish to convey information to DBRS for an initial rating, for surveillance regarding an initial rating or for conducting surveillance will develop appropriate mechanisms so that such information is made available to DBRS at the same time as it is made available on the Arranger's password-protected website. This would include, for instance, documentation provided during site visits and operational risk assessments.

### ***SF Instrument List***

DBRS considers the following SF instruments to meet the definition of the range of SF products outlined in the Amended Rule:

- Asset-backed securities.
- Asset-backed commercial paper (ABCP).
- Residential mortgage-backed securities (RMBS).
- Single and multi-tranched collateralized debt obligations (CDOs) and credit default swaps (CDSs) (except single-name CDSs).
- Commercial mortgage-backed securities (CMBS).
- Multi-tranched insurance securitizations.
- Structured investment vehicles (SIVs).
- Repackaged instruments where any of the underlying assets is an SF instrument.



The following instruments are not considered to be SF products or instruments:

- Covered bonds or similar dual-recourse securities.
- Government and mortgage-agency financings (e.g., Fannie Mae and Canada Housing and Mortgage Corporation (CMHC)).
- Derivative product companies (DPCs).
- Corporate/whole-business securitizations.
- Project financings.
- Enhanced equipment trust certificates.
- First mortgage bonds.
- Split shares.
- Bond funds.

### *Composite Ratings Are outside the Scope of the Amended Rule*

Composite ratings take into account various component factors as well as the rankings of a servicer or the ratings of providers of credit, liquidity or other support for the rating on an SF instrument. DBRS considers rankings or ratings of servicers or other support providers (referred to as composite ratings) that are the product of a separate engagement, unrelated to the terms or timing of any SF instrument and undertaken for independent purposes to fall outside the scope of the Amended Rule. For more information, please refer to the DBRS policy [Servicer Evaluations](#).

### *Private Ratings*

DBRS interprets the Amended Rule to exclude private or confidential ratings.

### *DBRS Commitment to the Market*

DBRS will continue to dialogue with market participants in order to appropriately interpret the Amended Rule and to achieve implementation in compliance with the Amended Rule.

DBRS has its headquarters in Toronto, with offices in Chicago, London and New York, and covers entities worldwide.

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