



Insight beyond the rating.

CONTACT INFORMATION

Mary Keogh
Managing Director,
Regulatory Affairs
+1 416 597 3614
mkeogh@dbrs.com

Daniel Curry
President, DBRS, Inc.
+1 212 806 3244
dcurry@dbrs.com

Huston Loke
President, DBRS Limited
+1 416 597 7533
hloke@dbrs.com

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

On November 16, 2011, 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, 2011, until December 2, 2012 (the Temporary Extended Order).¹

The SEC believes extending the conditional temporary exemption for a further year until December 2, 2012, is necessary or appropriate in the public interest and is consistent with the protection of investors given the continued concerns about potential disruptions of local securitization markets and because the SEC's consideration of the issues raised will benefit from additional time to engage in further dialogue with interested parties and to monitor market and regulatory developments. The SEC has also requested comments on this extension. DBRS believes that the Temporary Extended Order should be made permanent and to do so would be in the best interest of the public and investors.

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

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.

1. Refer to November 16, 2011, 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 (<http://www.sec.gov/rules/other/2011/34-65765.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.](#)

(4) November 29, 2010: [DBRS: SEC Extends Exemption to Rule 17g-5 for Non-U.S. Issuers.](#)



Approach for Exempt SF Instruments until December 2, 2012

Further to the SEC's Temporary 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, 2012. 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.

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 be covered by the Amended Rule:

- Asset-backed securities (ABS).
- 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 offices in Toronto (DBRS Limited) and in New York and Chicago (DBRS, Inc.). DBRS also maintains a London office (DBRS Ratings Limited) that is subject to EU regulation only.

Copyright © 2011, DBRS Limited, DBRS, Inc. and DBRS Ratings Limited (collectively, DBRS). All rights reserved. The information upon which DBRS ratings and reports are based is obtained by DBRS from sources DBRS believes to be accurate and reliable. DBRS does not audit the information it receives in connection with the rating process, and it does not and cannot independently verify that information in every instance. The extent of any factual investigation or independent verification depends on facts and circumstances. DBRS ratings, reports and any other information provided by DBRS are provided "as is" and without representation or warranty of any kind. DBRS hereby disclaims any representation or warranty, express or implied, as to the accuracy, timeliness, completeness, merchantability, fitness for any particular purpose or non-infringement of any of such information. In no event shall DBRS or its directors, officers, employees, independent contractors, agents and representatives (collectively, DBRS Representatives) be liable (i) for any inaccuracy, delay, loss of data, interruption in service, error or omission or for any damages resulting therefrom, or (2) for any direct, indirect, incidental, special, compensatory or consequential damages arising from any use of ratings and rating reports or arising from any error (negligent or otherwise) or other circumstance or contingency within or outside the control of DBRS or any DBRS Representative, in connection with or related to obtaining, collecting, compiling, analyzing, interpreting, communicating, publishing or delivering any such information. Ratings and other opinions issued by DBRS are, and must be construed solely as, statements of opinion and not statements of fact as to credit worthiness or recommendations to purchase, sell or hold any securities. A report providing a DBRS rating is neither a prospectus nor a substitute for the information assembled, verified and presented to investors by the issuer and its agents in connection with the sale of the securities. DBRS receives compensation for its rating activities from issuers, insurers, guarantors and/or underwriters of debt securities for assigning ratings and from subscribers to its website. DBRS is not responsible for the content or operation of third party websites accessed through hypertext or other computer links and DBRS shall have no liability to any person or entity for the use of such third party websites. This publication may not be reproduced, retransmitted or distributed in any form without the prior written consent of DBRS. ALL DBRS RATINGS ARE SUBJECT TO DISCLAIMERS AND CERTAIN LIMITATIONS. PLEASE READ THESE DISCLAIMERS AND LIMITATIONS AT <http://www.dbrs.com/about/disclaimer>. ADDITIONAL INFORMATION REGARDING DBRS RATINGS, INCLUDING DEFINITIONS, POLICIES AND METHODOLOGIES, ARE AVAILABLE ON <http://www.dbrs.com>.