April 10, 2014

European Securities and Markets Authority (ESMA)
103 rue de Grenelle
75345 Paris
France
Submitted online: www.esma.europa.eu

Re: Consultation Paper on CRA3¹ implementation (Consultation Paper)

Dear ESMA:

DBRS² welcomes the opportunity to comment on the Consultation Paper which seeks views on the draft Regulatory Technical Standards (RTS) ESMA is required to adopt under CRA3 on the following areas: article 8b information on structured finance instruments (article 8b) of the CRA3 Regulation, the new European Rating Platform (ERP), and the periodic reporting of fees charged by credit rating agencies (CRAs) to their clients (CRA Fees). This Consultation Paper follows a Discussion Paper on CRA3 Implementation³ which laid the groundwork for these draft RTS’s for which DBRS submitted comments.⁴

While this Consultation Paper reflects some change based on feedback from the Discussion Paper phase, many aspects remain the same. To a large extent, ESMA is bound by the Level I text in drafting the RTS’s. However, there are areas notably with respect article 8b that are inconsistent with Level 1 text. With respect to this RTS, DBRS has participated in discussions with the Association for Financial Markets in Europe (AFME) and endorses the views set out in AFME’s response to ESMA. As such, DBRS’s comments focus on the RTS’s for ERP and CRA Fees, and only raise additional or new concerns from its October letter.

ERP

The ERP is envisioned to merge the databases and information currently provided through CEREP and SOCRAT. However, the ERP will require a change in the frequency of the ratings feed from a monthly basis as currently provided in SOCRAT to a daily basis. This one change alone will be a large task requiring additional resources and cost to prepare, test and implement. Many of the fields outlined in Annex II of the Consultation Paper are also new. And the ERP calls for the mapping of Legal Entity Identifiers (LEI) as a solution for the unique identification of rated entities. This

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¹ Regulation (EU) No 462/2013 (CRA 3 Regulation or CRA3) amending the Regulation (EC) No 1060/2009 on credit rating agencies (CRA1) and Regulation (EU) No 513/2011(CRA2), collectively, the EU Regulatory Framework.

² DBRS is a global credit rating agency consisting of three affiliated companies: DBRS Limited (Canada), DBRS, Inc. (U.S.) and DBRS Ratings Limited (Europe).

³ ESMA/2013/891

mapping will be a significant undertaking. As DBRS considers the scope of the ERP and the collective burden and impact of the various changes, DBRS suggests that an extension of the legal time frame by at least six months to January 1, 2016 from June 21, 2015 is warranted. Such an extension would ensure successful implementation of the ERP by CRAs of all shapes and sizes. Moreover, a date of January 1, 2016 would avoid any disruptions to CEREP reporting which DBRS understands will co-exist with the ERP for some period of time.

With respect to content, ESMA proposes that all ratings press releases (PRs) as well as the research or rating reports for Sovereign ratings should be reported in the ERP. DBRS disagrees that the Sovereign ratings reports should be reported in the ERP.

DBRS publishes all PRs for its public ratings on a no cost basis on its website www.dbrs.com. In addition to the rating, DBRS’s PRs provide the key elements and rationale supporting the credit rating. Traditionally, the detailed rating reports underlying these PRs are made available on DBRS’s website on a paid subscription basis as a means of funding the analytical ratings process and escalating regulatory compliance burden (including new platforms such as the ERP). That is, DBRS charges for ratings reports to enable the public distribution of its ratings for free. CRA3 now requires CRAs to make publicly available the Sovereign rating reports. DBRS complies with this rule and makes these reports available for no cost on www.dbrs.com. However, requiring Sovereign rating reports to be published in the ERP sets a dangerous precedent. Fundamentally, the prime source for disclosure of any ratings information produced by a CRA should be the CRA itself. The ERP or any other platform should not replace or supplant a CRA’s means or obligation for such disclosure. It should be sufficient that the PRs are to be reported in the ERP. On a practical level, CRA3 includes specific review and publication rules for Sovereign ratings that make publication of the PRs and ratings reports more complicated.

CRA Fees

Based on significant feedback in the Discussion Paper phase, ESMA will not require detailed cost information to be reported at the outset. Instead, ESMA proposes to implement a screening tool to collect information and to detect deviations from a CRA’s standard pricing which might trigger more in-depth investigation or supervisory action which in turn would require cost information. While ESMA has cut back on the requirements for cost information, DBRS remains concerned that ESMA still fundamentally believes fees or pricing for ratings is primarily cost driven. As proposed, the screening tool would serve as a “backdoor” means into the investigation of a CRA’s cost structure and could create the potential for fee standardization.

As outlined in DBRS’s October 2013 comment letter, fees are not completely cost based. Fixed costs such as rent, taxes, technology and variable costs such as analyst and senior management compensation and the acquisition of external information certainly are base components. However, important factors such as issuer size, complexity, market conditions and workload are more subjective factors that are harder to quantify. Moreover, the value of a credit rating is to a large extent based on its utility in the market place. A credit rating may provide market access where there may be none or the best means of execution when debt is issued. And in the current EU environment, newer and smaller CRAs are price takers, not price drivers so cost has little bearing.

If the key issue is the potential for conflicts of interest with respect to the issuance of ratings, DBRS would argue that there are a myriad of rules in place that CRAs have implemented to mitigate and
manage this concern. Certainly, DBRS has spent considerable time, resources and compliance cost to ensure the independence and quality of its ratings. Indeed, CRAs should be permitted the freedom to operate as commercial businesses that produce independent, high quality and timely ratings so long as the appropriate governance, policies and procedures are in place as required under the EU Regulatory Framework.

DBRS suggests that the proposed screening tool requires more discussion between ESMA and the CRAs to understand its purpose, design and intended outcomes to determine a way forward and before ESMA commits to this endeavor.

Annex III, Table 1 and 2 in the Consultation Paper propose significant additional detail in and reporting of CRA pricing policies and procedures as well as the reporting of material changes to standard pricing. Table 3 proposes new, more detailed annual reporting of fees charged to individual clients. Similar to its comments regarding costs and notwithstanding that the proposed pricing requirements are somewhat bound by Level 1 text, DBRS is concerned that ESMA may unintentionally drive standardized pricing which would thwart much needed competition in the EU CRA industry. At a minimum, these requirements will require substantial additional CRA resources and cost, and as such, DBRS requests at least six to nine months more lead time than proposed to prepare, test and implement.

In closing, DBRS appreciates the opportunity to provide its comments on the Consultation Paper and would be pleased to answer any questions ESMA may have. DBRS would also be happy to meet with ESMA to discuss its views.

Very truly yours,

Mary Keogh
Managing Director
Global Regulatory Affairs
DBRS