



COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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REPORT

**Report by CESR on compliance of
EU based Credit Rating Agencies
with the 2008 IOSCO Code of
Conduct**

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EXECUTIVE SUMMARY

1. As a follow up to the Group of Twenty (G20) conclusions of November 2008 and of the European Commission Communication on Credit Rating Agencies (CRAs) of March 2006¹, CESR has been asked to report to the European Commission and the Economic and Financial Committee of the European Union (EFC) on the progress made by EU based CRAs towards compliance with the revised International Organisation of Securities Commission's Code of Conduct for CRAs (IOSCO Code) published in May 2008. CESR has also been asked to report any significant developments or risks that it identifies from this work which might have an impact on rating activity in the EU.
2. In responding to this request, CESR builds on the work already performed in IOSCO and has produced:
 - An initial, non-public, interim report containing a preliminary review of the level of compliance of the three largest CRAs' (Standard & Poor's (S&P), Fitch Ratings (Fitch) and Moody's Investor Service (Moody's)) codes of conduct with the updated IOSCO Code, which was sent was by CESR to the Commission and EFC in March 2009.
 - This final report which contains analysis of the compliance of a wide range of EU based CRAs codes of conduct, including the three CRAs covered in the interim report, with the updated IOSCO Code.
3. This final report focuses on whether a CRA's code of conduct is compliant with, or deviates from, the IOSCO Code. CESR's analysis is exclusively based on a CRA's code and does not take into account other documents that are on the CRA's website. In addition, CESR does not opine on the practical application of a CRA's own code. This means that CESR does not check whether a CRA complies in practice with what is stated in its code. Equally, where a CRA's code deviates from an IOSCO provision, CESR does not check whether the CRA nevertheless complies with the IOSCO provision in practice.
4. CESR's overall conclusion with respect to the codes of conduct of the larger, global CRAs (S&P, Moody's, Fitch, DBRS and AM Best) is that they are broadly compliant with the IOSCO Code. It also notes that they have updated their codes of conduct to take into account most, but not all, of the revisions made to the IOSCO Code in May 2008, in particular with respect to structured finance products. However, there are also a number of provisions detailed within this report on which these CRAs deviate from the IOSCO Code and therefore CESR believes room for improvement exists.
5. Full detail on the IOSCO Code provisions from which these CRAs deviate, either individually or collectively, are included in the main body of this report. However CESR has noted two provisions of the updated 2008 IOSCO Code, specifically concerning structured finance ratings, from which most of these CRAs deviate.

¹ OJ C59/2 of 11.3.2006



- The requirement to prohibit analysts from making proposals or recommendations regarding the design of structured finance products that a CRA rates.
 - The requirement to disclose in the rating announcement whether the issuer of a structured finance product has informed the CRA that it is publicly disclosing all relevant information about the product being rated or if the information remains non-public.
6. With respect to the other EU CRAs, CESR has identified that about a third have not adopted any code of conduct and strongly recommends that these CRAs consider implementing the IOSCO Code as a matter of priority.
 7. CESR also identifies that the large majority of the CRAs which have adopted and published codes of conduct have not adopted the 2008 amendments to the IOSCO Code. These CRAs have explained that they are awaiting the incoming EU legislation to update their codes of conduct. CESR acknowledges this point and encourages swift adoption of the 2008 IOSCO Code once the EU legislation is finalised.
 8. Overall, CESR concludes that the EU CRAs that have adopted and published codes of conduct are broadly compliant with the 2004 IOSCO Code.



I. INTRODUCTION

1. The Group of Twenty (G20) statement of November 2008 outlined two action points with respect to Credit Rating Agencies (CRAs) namely:

- *Regulators should take steps to ensure that credit rating agencies meet the highest standards of the international organization of securities regulators and that they avoid conflicts of interest, provide greater disclosure to investors and to issuers, and differentiate ratings for complex products. This will help ensure that credit rating agencies have the right incentives and appropriate oversight to enable them to perform their important roles in providing unbiased information and assessments to markets.*
- *The international organization of securities regulators should review credit rating agencies' adoption of the standards and mechanisms for monitoring compliance.*

2. This was further built on in the G20 communiqué of April 2009 which stated:

We have agreed on more effective oversight of the activities of Credit Rating Agencies, as they are essential market participants. In particular, we have agreed that:

- *all Credit Rating Agencies whose ratings are used for regulatory purposes should be subject to a regulatory oversight regime that includes registration. The regulatory oversight regime should be established by end 2009 and should be consistent with the IOSCO Code of Conduct Fundamentals. IOSCO should coordinate full compliance;*
- *national authorities will enforce compliance and require changes to a rating agency's practices and procedures for managing conflicts of interest and assuring the transparency and quality of the rating process. In particular, Credit Rating Agencies should differentiate ratings for structured products and provide full disclosure of their ratings track record and the information and assumptions that underpin the ratings process. The oversight framework should be consistent across jurisdictions with appropriate sharing of information between national authorities including through IOSCO.*

3. The International Organisation of Securities Commissions (IOSCO) has already responded to the November request by publishing a report² in March 2009 containing a review of the implementation of its Code of Conduct for CRAs (IOSCO Code). The IOSCO Code, originally developed in 2004, was updated in 2008 in response to the problems that had emerged in credit markets and specifically those that had followed the ratings downgrades experienced by a number of securities, particularly structured finance products. As outlined below, a number of CESR members participated both in the IOSCO work stream updating the IOSCO Code and in the workstream producing the report on CRAs' compliance with the updated IOSCO Code.

² The full IOSCO report is available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD286.pdf>



4. At a European level, the November G20 conclusions were reiterated by the Economic and Financial Committee of the European Union (EFC) in December 2008. Consequently, in February 2009, the European Commissioner for the Internal Market and Services asked CESR to provide further analysis of the progress made by EU based CRAs towards implementing the updated IOSCO Code. CESR was further requested to report any significant developments or risks identified by this work that might have a particular impact on the rating activity in the EU.
5. In responding to this request, CESR builds on the work already performed in IOSCO and has produced:
 - An initial, non-public, interim report containing a preliminary review of the level of compliance of the three largest CRAs' (Standard & Poor's (S&P), Fitch Ratings (Fitch) and Moody's Investor Service (Moody's)) codes of conduct with the updated IOSCO Code, which was sent by CESR to the Commission and EFC in March 2009.
 - This final report which contains analysis of the compliance of a wide range of EU based CRAs, including the three CRAs covered in the interim report, with the updated IOSCO Code.
6. This report contains the following sections:
 - The results of recent analysis undertaken by CESR to identify the number of CRAs active within the EU;
 - An overview of IOSCO's work and CESR members' engagement in that work;
 - A brief overview of how the IOSCO Code relates to the incoming EU legislation and its relevance for this report; and
 - The results of CESR's analysis of the level of compliance of the codes of conduct of the CRAs reviewed with the IOSCO Code.



II. RESULTS OF CESR'S SURVEY ON EU CRAS

7. In order to assess how many entities might apply for registration under the new EU CRA Regulation, CESR conducted a survey of its members to identify EU CRAs in Q1 2009.
8. The responses to this survey highlight that there are currently around 24 EU CRAs that could potentially qualify for registration under the new legislation. Of these, only four (S&P, Moody's, Fitch and Coface) currently have subsidiaries or branches in several EU countries. Alongside these pan-European (in reality global) agencies, the survey also identified approximately 20 local EU CRAs³ that only operate in one jurisdiction. However, it should be noted that the survey was conducted whilst the EU legislative process was still in progress. Therefore the exact number of CRAs that may apply for registration is likely to be different as the scope and application of the new legislation has continued to evolve. All of the CRAs identified in the survey have been included within CESR's analysis in preparing this report.
9. Several of the CRAs that CESR's survey identified currently hold External Credit Assessment Institution (ECAI) status for the purposes of the Capital Requirements Directive (CRD), have applied for this status, or have indicated that they intend to make such an application. The CRAs that already hold ECAI status are S&P, Moody's, Fitch, DBRS, Coface, and Lince Spa. Under the latest terms of the legislation, a CRA will be required to register under the new CRA legislation as a pre-requisite for applying for ECAI status.

³ This includes AM Best who has one EU subsidiary and Dominion Bond Rating Service (DBRS) who has no current EU office but has indicated to CESR that it is likely to set one up to comply with the new EU Legislation.



III. OVERVIEW OF IOSCO'S WORK AND CESR MEMBERS' ENGAGEMENT IN THAT WORK

CESR members' engagement in IOSCO's work

10. A number of CESR's CRA Expert Group members (France, Germany, Italy, Spain and the UK) have been actively engaged in the IOSCO Task Force on CRAs for a number of years. This engagement has facilitated ongoing dialogue and consistency between the work conducted at the IOSCO level and that conducted by CESR.
11. In order to further strengthen this cooperation, the rapporteur of the CESR CRA Expert Group has been invited to participate as an observer at IOSCO CRA Task Force meetings and did indeed attend the last meeting of this Group in January 2009 in this capacity. Given CESR is undertaking work very similar to that performed by IOSCO and that such work is in relation to the same underlying firms, ensuring a link is maintained between the two work streams should help to ensure that both organisations keep each other informed about the outcome of the work they perform to discharge their respective mandates. CESR has also invited IOSCO to attend meetings of its Expert Group as an observer.

IOSCO Code of Conduct 2004

12. In 2004, IOSCO released the IOSCO Code as a result of a Task Force project that involved securities regulators, Basel Committee members and the CRA industry. The IOSCO Code is aimed at enhancing quality, integrity, timeliness and transparency of the rating process and to address potential conflicts of interest. It has been designed to be incorporated into CRAs' own codes of conduct which, according to the provisions of the IOSCO Code, should be published. Recognising differences in legal and market expectations and requirements for CRAs across jurisdictions, the IOSCO Code has been designed under a 'comply or explain approach' and allows CRAs to omit or change any specific provision. However, the IOSCO Code requires that if a CRA does this, it should explain, to inform market participants, where its code differs from the IOSCO Code and how these variances address the underlying objectives of the IOSCO Code.
13. In February 2007, IOSCO released a report for consultation on the level of implementation of the IOSCO Code by CRAs. In particular, the Task Force assessed (1) the degree to which CRAs have adopted codes of conduct that reflect the provisions of the IOSCO Code, and (2) whether any trends existed regarding whether CRAs consistently choose to 'explain' (rather than comply with) specific provisions of the IOSCO Code.
14. The report concluded that the largest CRAs including Moody's, Fitch and S&P had implemented the IOSCO Code extensively but not fully, which was aligned with the conclusion of the CESR report to the Commission in January 2007 (CESR/06-542).

IOSCO Code of Conduct 2008

15. In March 2007, the Financial Stability Forum (FSF) requested that IOSCO, the Committee on Global Financial Systems (CGFS) and other interested member bodies explore whether there were any outstanding issues related to the role of CRAs in structured finance. IOSCO reviewed the 2004 Code of Conduct to determine whether it could be enhanced in the light of market events, particularly with respect to ratings of



structured finance products. After meetings with the CRA industry and market participants involved in the structured finance industry, IOSCO published a revised version of the IOSCO Code in May 2008. The revised Code includes new provisions designed to address directly certain conflicts of interest and transparency issues associated with ratings of structured finance instruments.

16. Given the gravity of the credit crisis, and the critical role of the CRAs in financial markets, IOSCO followed up on the 2007 report on compliance and reviewed 21 CRAs based in six different jurisdictions.
17. The IOSCO report published in mid March concluded that a larger proportion of the CRAs reviewed for the 2009 report had fully or partially adopted the IOSCO Code than in 2007. In addition, the report noted that most of the larger CRAs which have been actively involved in rating structured finance products, had modified their codes of conduct to take into account the new IOSCO provisions. The report also highlighted that some of the smaller CRAs had not adopted the 2008 revisions to the IOSCO Code and identified several factors that may have contributed to this. One relevant suggestion was that EU CRAs may be waiting to update their codes of conduct until there was greater certainty over the incoming European legislation.



IV. THE IOSCO CODE AND ITS RELEVANCE TO INCOMING EU LEGISLATION

18. The IOSCO Code has been widely recognised as a global benchmark for conduct of business standards to which market participants and others can expect CRAs to adhere to. Given the global nature of the credit rating industry, such an internationally agreed standard is designed to promulgate consistency in regulatory engagement with CRAs. This has been reinforced by recent reports and statements by, among others, the G20 and the Financial Stability Forum (now the Financial Stability Board).
19. The incoming EU legislation on CRAs also contains a range of requirements for the conduct of business of EU based CRAs. Whilst these are in many cases based on, and similar to, corresponding provisions of the IOSCO Code, they go beyond the IOSCO Code in some areas.
20. It is therefore important to recognise that this report assesses the compliance of the codes of conduct of a variety of EU based CRAs with the provisions of the IOSCO Code. It does not provide any indication or guide as to whether these same CRAs meet, or are likely to meet, the relevant standards for registration under the incoming EU legislation.



V. ANALYSIS OF CRA COMPLIANCE WITH THE IOSCO 2008 REVISED CODE

21. In order to compile this interim report, CESR has updated its approach compared with its two previous reports to the European Commission. For this report CESR has conducted a factual, desk-based review of the compliance of the CRA's codes of conduct with the revised IOSCO Code along similar lines to the recent IOSCO report.
22. This analysis focuses on whether a CRA's code of conduct is compliant with, or deviates from, the IOSCO Code. CESR's analysis is exclusively based on a CRA's code and does not take into account other documents that are on the CRA's website. In addition, CESR does not opine on the practical application of a CRA's own code. This means that CESR does not check whether a CRA complies in practice with what is stated in its code. Equally, where a CRA's code deviates from an IOSCO provision, CESR does not check whether the CRA nevertheless complies with the IOSCO provision in practice.
23. The IOSCO Code is designed to be applied according to a 'comply or explain' principle. In conducting this review, CESR acknowledges that the deviation of a CRA's code from a provision of the IOSCO Code does not in itself demonstrate non-implementation of that provision, provided that there is adequate explanation for the deviation disclosed publicly.
24. In conducting this review, CESR has also considered a CRA's business model. For example, Lince Spa and Capp&Caap only provide ratings on a subscriber basis and therefore some of the IOSCO provisions are not fully applicable. COFACE also provides ratings paid for by their customers, although they have announced their intention to expand their offering into the domain of solicited ratings in the near future.
25. Due to the tight deadline and expanded set of CRAs under analysis, CESR has not been able, as it did in previous reports, to enter into an extensive dialogue with the CRAs. However, in compiling this report, CESR gave the CRAs involved the opportunity to comment on matters of factual accuracy.
26. The conduct of business standards applied by EU CRAs, as typically outlined in their codes of conduct, will be subject to further focus as a result of the incoming EU legislation on CRAs. This will be conducted by national authorities and entail close cooperation through the coordination of supervisory colleges and CESR.
27. CESR has assessed the codes, as available at the end of March 2009, of 24 CRAs as contained in the table below:

COUNTRY	CRAs	Link to code of conduct
BULGARIA	Bulgarian Credit Rating Agency J.S.C	N/A



CYPRUS	Capital Intelligence Limited	N/A
GERMANY	ASSEKURATA Assekuranz Rating-Agentur GmbH	http://www.assekurata.de/content.php?baseID=133
	Creditreform Rating AG	http://www.creditreform-rating.de/Ressourcen/PDF/Unternehmensrating/Verhaltenskodex_Creditreform_RatingAG.pdf
	Euler Hermes Rating GmbH	http://www.ehr.de/presse/doc/kod.pdf
	Prof Dr. Schneck Rating GmbH	http://www.schneck-rating.de/index.php?id=34
	URA Rating Agentur AG	http://www.ura.de/index.php?View=WirUeberUns&SYS_MUL03_01_src_Cat1=URA%20Code%20of%20Conduct&SYS_MNU03_02_current_mp=18
	MAR-Rating GmbH	N/A
	RS Rating Services AG	N/A
ITALY	Lince Spa	http://www.lince.it/group/approfondimento/ECAI_CodiceComportamento_EN.pdf
	Capp&Caap Srl	http://www.capp-capp.com/index.php?page_id=44
PORTUGAL	Companhia Portuguesa de Rating	http://www.eprating.pt/1.0apres/pdf/151_codigo_conduta.pdf
SLOVAK REPUBLIC	European Rating Agency, a.s.	http://www.euroratings.co.uk/index.php?option=com_content&task=view&id=22&Itemid=37



	ECRAI - External Credit Rating and Assessment Institution, a.s.	http://www.ecrai.eu/en/regulation/ecrai ™ code of conduct.php
SWEDEN	UC AB	N/A
	AAA Soliditet	N/A
	Svensk KommunRating AB	N/A
UNITED KINGDOM	The Economist Intelligence Unit	N/A
GLOBAL	AM Best	http://www.ambest.com/nrsro/code.pdf
	DBRS	http://www.dbrs.com/research/224521/i nternal/Code Of Conduct.pdf
	Fitch	http://www.fitchratings.com/web conte nt/credit_policy/code_of_conduct.pdf
	Moody's	http://www.moodys.com/cust/content/Co ntent.ashx?source=StaticContent/Free %20Pages/Regulatory%20Affairs/Docu ments/professional_conduct.pdf
	Standard&Poors (S&P)	http://www2.standardandpoors.com/spf/ csv/equity/Code of Conduct December %202008.pdf?vregion=eu&vlang=en
FRANCE	Coface	http://www.coface.fr/CofacePortal/Show Binary/BEA%20Repository/FR_fr_FR/p ages/home/wwd/i/ docs/deontologie scor e.pdf

A. Overview

CRAs without a code of conduct

28. Of the 24 CRAs reviewed, six do not have a code of conduct. This includes three CRAs established in Sweden (AAA Soliditet, Svensk Kommunrating, UC), two German CRAs (MAR Rating and RS Rating) and a UK based CRA (The Economist Intelligence Unit).
29. Four of them, RS Rating, The Economist Intelligence Unit, Svensk Kommunrating and AAA Soliditet claim to adhere to the IOSCO Code. In addition, MAR Rating, a newly established agency, outlines general principles on its website that are consistent with the IOSCO Code.



CRA without a published code of conduct

30. Capital Intelligence, a CRA established in Cyprus, and Bulgarian Credit Rating Agency have both adopted codes of conduct and provided a copy to CESR but have not made their codes public. Capital Intelligence has informed CESR that it intends to publish its code, based on the 2008 version of the IOSCO Code, on its website in July 2009. Bulgaria Credit Rating Agency's code is based on the 2008 version of the IOSCO Code.
31. CESR has analysed these codes and, were they to be made public, these CRAs' codes would comply with a significant number of the provisions of the IOSCO Code. However, for the purposes of this report CESR considers these CRAs to deviate from the IOSCO Code as market participants and other stakeholders have no ability to verify this via their own analysis.

CRA that have adopted and published a code of conduct

32. Of the 24 CRAs under review 16 have adopted and published codes of conduct. This includes eight CRAs whose codes are aligned to the 2008 IOSCO Code and six whose codes are based on the 2004 IOSCO Code. In addition, two CRAs have codes of conduct that only reproduce some of the IOSCO Code's provisions.
33. The five global CRAs that are involved in rating structured finance products (Moody's, Fitch, S&P, AM Best and DBRS) have modified their codes of conduct to take into account the new IOSCO provisions. Given that the 2008 modifications were designed to address concerns raised primarily by CRAs rating these products, this is an encouraging sign. In addition, Lince SPA and Capp&Caap and ECRAI have adopted the new version of the IOSCO Code. A number of these CRAs indicated that they will be issuing further updates to their codes in the near future.
34. Six CRAs however (Assekurata, Creditreform, Euler Hermes Rating, URA Rating Agentur, Companhia Portuguesa de Rating and European Rating Agency), all of which do not rate structured finance products, have not implemented the relevant 2008 revisions to the IOSCO Code. All of these CRAs have explained that they are awaiting the incoming EU legislation to update their codes of conduct.
35. Prof Dr. Schneck Rating and COFACE's codes reflect the major concepts of the IOSCO Code although they do not reproduce a significant number of the IOSCO Code provisions. They have both indicated that they will publish a revised code of conduct as soon as the EU Regulation has been published.

B. Detailed analysis of implementation

36. The section below identifies and discusses where the codes of conduct reviewed by CESR deviate from the 2008 IOSCO Code. The significant number of provisions of the IOSCO Code, with which the codes of conduct of the CRAs under review comply, are not specifically highlighted.
37. In conducting this analysis, CESR does not consider that a CRA deviates from the IOSCO Code where it has not adopted a specific provision of the 2008 IOSCO Code because this provision is not appropriate to its business model. For example a number of the new 2008 provisions are only applicable to structured finance products, which the



smaller CRAs do not rate.

38. The analysis only includes the 14 CRAs that have adopted and published a detailed code of conduct. As outlined above, whilst Bulgarian Credit Rating Agency and Capital Intelligence have unpublished codes of conduct that comply with a number of provisions of the IOSCO Code, as these are not publicly available for other stakeholders to analyse they are not incorporated into the analysis below. In addition, since Prof Dr. Schneck Rating and COFACE's published codes of conduct only comply with a certain number of the provisions of the IOSCO Code their codes have not been included in the analysis below.

Section 1 of the IOSCO Code: quality and integrity of the rating process

Provision 1.2

39. This provision states that a CRA should use rating methodologies that are rigorous, systematic and, where possible, result in ratings that can be subjected to some form of objective validation based on historical experience.
40. A number of the CRAs' codes of conduct do not indicate that their ratings can be subjected to some form of objective validation based on historical experience. There are two reasons put forward. One is that they have not been in operation long enough to have sufficient historical performance data and another is the lack of default in the sector/country they rate.
41. CESR acknowledges that it may be difficult for certain CRAs to comply with this provision due to their organisation, size, structure and history. It however encourages them to comply with this requirement and notes that the new EU legislation includes a similar requirement.

Provision 1.4

42. This provision states that credit ratings should be assigned by the CRA and not by any individual analyst employed by the CRA. In addition ratings should reflect all information known, and believed to be relevant, to the CRA, consistent with its published methodology. Finally, the CRA should use people who, individually or collectively (particularly where rating committees are used) have appropriate knowledge and experience in developing a rating opinion for the type of credit being applied.
43. Capp&Caap's code does not provide for the presence of resources with appropriate knowledge and experience to make a proper rating assessment and does not provide any explanation for this deviation.

Provision 1.7 (partly new IOSCO provision)

44. This provision of the IOSCO code was updated in 2008 with a new requirement for CRAs to adopt reasonable measures so that the information they use in assigning a rating is of sufficient quality to support a credible rating. If the rating involves a type of financial product presenting limited historical data (such as an innovative financial vehicle), the CRA should make clear, in a prominent place, the limitations of the rating. CESR has interpreted this provision as applying to traditional corporate bonds ratings

as well as structured finance products.

45. Assekurata, Creditreform, Euler Hermes Rating, URA Rating Agentur and European Rating Agency have not adopted this new requirement as their codes of conduct are based on the 2004 version of the IOSCO Code. Lince Spa, however, does not include this requirement despite the fact that its code is based on the 2008 IOSCO Code.
46. S&P's code includes the full provision but introduces terms that could weaken the objective of this IOSCO provision.

Provision 1.7.2 (new IOSCO provision)

47. This new provision states that a CRA should establish and implement a rigorous and formal review function responsible for periodically reviewing the methodologies and models and significant changes to the methodologies and models it uses. Where feasible and appropriate for the size and scope of its credit rating services, this function should be independent of the business lines that are principally responsible for rating various classes of issuers and obligations.
48. As this is a new IOSCO provision Assekurata, Creditreform, Euler Hermes Rating, URA Rating Agentur, European Rating Agency and Companhia Portuguesa de Rating have not included this provision in their codes of conduct. Lince Spa has not included this provision in its code despite the fact that its code is based on the 2008 IOSCO Code and provides no explanation for the deviation.
49. S&P and DBRS replicate this IOSCO provision in their codes but do not actually specify whether their review functions are actually independent.

Provision 1.8

50. This provision indicates that a CRA should structure its rating teams to promote continuity and avoid bias in the rating process.
51. Lince Spa's code only indicates that it will structure its rating committees, but not its rating teams, to promote continuity and avoid bias in the rating process. Capp&Caap's code does not include a provision to this effect and provides no explanation for this deviation. S&P's code only states that it will 'endeavour' to do so, which CESR has interpreted as weakening this provision of the IOSCO Code.

Provision 1.9 (new IOSCO provision)

52. This new provision states that a CRA should ensure that adequate personnel and financial resources are allocated to monitoring and updating its ratings. It also indicates that subsequent monitoring should incorporate all cumulative experience obtained by the CRA and changes in ratings criteria and assumptions should be applied where appropriate to both initial ratings and subsequent ratings.
53. The CRAs whose code is based in the 2004 IOSCO code (Assekurata, Creditreform, Euler Hermes Rating, URA Rating Agentur, Companhia Portuguesa de Rating and European Rating Agency) do not include this provision in their codes of conduct.
54. Lince Spa's code does not envisage that subsequent monitoring should incorporate all



cumulative experience and that changes in ratings criteria and assumptions should be applied to both initial and subsequent ratings. It provides no explanation for the deviation. In addition, both S&P and Moody's have included terms to their codes that could weaken the objective of this IOSCO provision.

Provision 1.10

55. This provision states that where a CRA makes its ratings available to the public, the CRA should publicly announce if it discontinues rating an issuer or obligation. In addition, where a CRA's ratings are provided only to its subscribers, the CRA should announce to its subscribers if it discontinues rating an issuer or obligation. In both cases, continuing publications by the CRA of the discontinued rating should indicate the date the rating was last updated and the fact that the rating is no longer being updated.
56. The codes of both AM Best and DBRS do not provide for the requirement that continuous publication of a discontinued rating should indicate the date the rating was last updated and the fact that the rating is no longer being updated. It may be that discontinued ratings are removed from their websites, but this is not clear in their codes of conduct.
57. Capp&Caap and Lince Spa's codes do not clearly indicate that they will notify subscribers of the discontinuation of a rating. .

Provision 1.14

58. This provision indicates that a CRA and its employees should not, either implicitly or explicitly, give any assurance or guarantee of a particular rating prior to a rating assessment. This does not preclude a CRA from developing prospective assessments used in structured finance and similar transactions.
59. Capp&Caap's code includes this prohibition but also indicates that Capp&Caap and its analysts cannot be held responsible for any rating opinion that is disclosed before the rating is communicated to the users. CESR considers that this weakens the intention of the IOSCO Code but also notes that Capp&Caap only engages in unsolicited ratings and typically has little, if no, contact with issuers during the rating process.

Provision 1.14.1 (new IOSCO provision)

60. This new provision states that a CRA should prohibit its analysts from making proposals or recommendations regarding the design of structured finance products that the CRA rates.
61. S&P, Fitch and Moody's codes all include a provision prohibiting analysts from making proposals or recommendations regarding the design of structured finance products, but also include provisions in addition to those of IOSCO's Code that allow for interaction between the analyst and the issuer or its agents related to the structure of the transaction and to the application of the rating methodology. These CRAs outline in their codes their view that this is in line with the intention of the IOSCO Code because they have interpreted that the IOSCO Code does not intend to prevent all forms of communication between issuers, their agents and structured finance analysts. The CRAs' codes therefore include further terms which aim to clarify the extent of permissible discussions to provide further clarity to market participants. CESR,



however, considers that S&P, Fitch and Moody's deviate from this provision.

Provision 1.15

62. This provision outlines that CRAs should institute policies and procedures that clearly specify a person responsible for a CRA's and a CRA's employees' compliance with the provisions of a CRA's code of conduct and with applicable laws and regulations and that this individual's compensation and reporting lines should be independent of the CRA's ratings operations.
63. Creditreform states that, due to its size, its compliance function is executed by the CEO. Capp&Caap and Companhia Portuguesa de Rating's compliance functions are executed by the General Manager and the Board of Directors respectively. It is unclear whether this would achieve the goal of independence expected by the IOSCO Code. In particular the CEO and General Manager's compensation is likely to be linked to the ratings operations.

Provision 1.16

64. This provision states that upon becoming aware that another employee or entity under common control with the CRA is or has engaged in conduct that is illegal, unethical or contrary to the CRA's code of conduct, a CRA employee should report such information immediately to the individual in charge of compliance or an officer of the CRA, as appropriate, so proper action may be taken.
65. DBRS's Code expects employees to report, among other things, any conduct contrary to the DBRS Employee Code of Conduct, but does not specifically refer to conduct contrary to the DBRS Code of Conduct.

Section 2 of the IOSCO Code: CRA independence and avoidance of conflicts of interest

Provision 2.5 (partly new IOSCO provision)

66. This provision outlines that a CRA should separate, operationally and legally, its credit rating business and CRA analysts from any other businesses of the CRA, including consulting businesses, that may present a conflict of interest. A CRA should ensure that ancillary business operations which do not necessarily present conflicts of interest with the CRA's rating business have in place procedures and mechanisms designed to minimize the likelihood that conflicts of interest will arise. A CRA should also define what it considers, and does not consider, to be an ancillary business and why.
67. The codes of Capp&Caap and S&P comply with the requirement for an operational separation but not a legal one. S&P recognises this deviation in its code of conduct and although it notes that it has implemented a firewall policy it does not specifically explain why it has not implemented a legal separation. In CESR's view this is not a satisfactory explanation.
68. Lince Spa's code does not provide for the legal and operational separation of its credit rating business from any other businesses that could give rise to conflicts of interest. Furthermore, it does not provide for the definition of what it considers to be an ancillary



business.

Provision 2.6

69. Provision 2.6 states that a CRA should adopt written internal procedures and mechanisms to identify and eliminate, or manage and disclose, as appropriate, any actual or potential conflicts of interest that may influence the opinions and analyses a CRA makes or the judgement and analyses of the individuals a CRA employs who have an influence on rating decision.
70. Capp&Caap does not include this provision in its code and does not provide any explanation for this deviation.

Provision 2.8

71. This provision indicates that a CRA should disclose the general nature of its compensation arrangements with rated entities.
72. Fitch's code does not provide for the general nature of their compensation arrangements with rated entities to be publicly disclosed. It includes various provisions around fee determination and disclosure which CESR does not consider fully adequate to comply with the relevant IOSCO Code provision.

Provision 2.8.b (new IOSCO provision)

73. This new provision outlines that a CRA should disclose if it receives 10 percent or more of its annual revenue from a single issuer, originator, arranger, client or subscriber (including any affiliates of that issuer, originator, arranger, client or subscriber).
74. As this is a new IOSCO provision Assekurata, Creditreform, Euler Hermes Rating, URA Rating Agentur, European Rating Agency and Companhia Portuguesa de Rating have not included this provision in their codes of conduct.

Provision 2.8.c (new IOSCO provision)

75. This new provision states that CRAs, as an industry should encourage structured finance issuers and originators of structured finance products to publicly disclose all relevant information regarding these products so that investors and other CRAs can conduct their own analysis independently of the CRA contracted by the issuers and/or originators to provide a rating. In addition, CRAs should disclose in their rating announcements whether the issuer of a structured finance product has informed them that it is publicly disclosing all relevant information about the product being rated or if the information remains non-public.
76. Moody's, S&P, Fitch and DBRS have not implemented this provision in their respective codes. These CRAs state that they will encourage structured finance issuers and originators to publicly disclose all relevant information regarding these products. However, they do not state that they will disclose in ratings announcements whether the issuer/originator will disclose such information.
77. These four CRAs indicate in their codes that they are unable to comply with this requirement because they neither own nor control the information that is being



disclosed to them to produce ratings.

Provision 2.11.a

78. This provision outlines that a CRA analyst should not be compensated or evaluated on the basis of the amount of revenue that the CRA derives from issuers that the analyst rates or with which the analyst regularly interacts.
79. Assekurata deviates from this provision. Its code of conduct states that reporting lines for its employees and compensation arrangements are structured to eliminate or manage actual and potential conflicts of interest. Its analyst compensation scheme does not take into account individual ratings for which they are responsible. A portion of the compensation received by managers, however, varies based on the yearly revenue of their respective business units, and analysts' compensation varies based on the total number of ratings for which an individual analyst is responsible. CESR interprets this as a deviation.

Provision 2.11.b (new IOSCO Provision)

80. This new provision states that a CRA should conduct formal and periodic reviews of compensation policies and practices for CRA analysts and other employees who participate in or who might otherwise have an effect on the rating process to ensure that these policies and practices do not compromise the objectivity of the CRA's rating process.
81. As this is a new IOSCO provision Assekurata, Creditreform, Euler Hermes Rating, URA Rating Agentur, European Rating Agency and Companhia Portuguesa de Rating have not included this provision in their codes of conduct.

Provision 2.12

82. This provision indicates that a CRA should not have employees who are directly involved in the rating process initiate, or participate in, discussions regarding fees or payments with any entity they rate.
83. DBRS, URA and Companhia Portuguesa de Rating's codes deviate from this provision. DBRS's code has introduced some exceptions not envisaged in the IOSCO Code, for example analysts may quote factual fee-related information and/or send standard fee schedules to current or proposed issuers. Furthermore, DBRS's code allows analysts in the role of Managing Director to negotiate fees. URA's code envisages that management participates in discussions regarding ratings as well as fees. Companhia Portuguesa de Rating's code allows employees who are directly involved in the rating process to initiate and participate in discussions regarding fees/payment.

Provision 2.13

84. This provision identifies a number of circumstances in which a CRA employee should not participate in or otherwise influence the determination of the CRA's rating of any particular entity or obligation.
85. Most CRAs have fully adopted this provision. S&P, however, limits this prohibition to analysts only but uses a broad definition of 'analyst' in its code. Assekurata and DBRS



do not include all the circumstances in which IOSCO envisages that a CRA employee should be prohibited from rating an entity.

Provision 2.14

86. This provision states that a CRA's analysts and anyone involved in the rating process (or their spouse, partner or minor children) should not buy or sell or engage in any transaction in any security or derivative based on a security issued, guaranteed, or otherwise supported by any entity within such analyst's area of primary analytical responsibility, other than holdings in diversified collective investment schemes.
87. The codes of conduct of DBRS and AM Best prohibit their analysts (and in the case of DBRS, all employees) from buying, selling or owning securities of the specific issuers they rate, but do not prohibit transactions in all issuers in that analyst's area of primary responsibility. This implies that their codes allow an analyst to trade or own securities of a company that, for example, operate in the industry that the analyst is rating as long as the specific company is not subject to a rating by the CRA. CESR notes this as a deviation from the IOSCO Code provision, which CESR interprets as designed to prevent the potential for an analyst or its relative to benefit financially from any price sensitive information that a rating analyst may be party to in the course of its duties.
88. AM Best acknowledges this deviation in its code and notes that it believes that, taken as a whole, its restrictions with respect to its and its employees' ownership of securities are sufficient to ensure analyst and employee independence and to achieve the objectives set forth in the IOSCO Code. In addition, AM Best does not allow any of its employees to engage in securities transactions of any of the issuers it rates, even if they have no involvement with that rating, which goes beyond the IOSCO Code.
89. DBRS's code does not prohibit employees from rating a government or government agency if they hold securities of that government or agency or have holdings in a blind trust or other independently managed account over which the analyst has no influence or control.
90. Companhia Portuguesa de Rating has restricted this IOSCO prohibition to its employees and not to its employees' relatives

Provision 2.17 (new IOSCO provision)

91. This new provision states that a CRA should establish policies and procedures for reviewing the past work of analysts that leave the employment of the CRA and join an issuer the CRA analyst has been involved in rating, or a financial firm with which the CRA analyst has had significant dealings as part of his or her duties at the CRA.
92. Assekurata, Creditreform, Euler Hermes Rating, URA Rating Agentur, European Rating Agency and Companhia Portuguesa de Rating have not included this provision in their codes as it is a 2008 addition to the IOSCO Code.

Section 3 of the IOSCO Code: CRA responsibilities to the investing public and issuers

Provision 3.2

93. This provision provides that a CRA should publicly disclose its policies for distributing



ratings, reports and updates.

94. The Capp&Caap code does not include this provision and provides no explanation for this deviation.

Provision 3.3 (partly new IOSCO provision)

95. This provision outlines that a CRA should indicate with each of its ratings when the rating was last updated. In addition, this provision was updated in 2008 with the requirement that each rating announcement should also indicate the principal methodology or methodology version that was used in determining the rating and where a description of that methodology can be found. Where the rating is based on more than one methodology, or where a review of only the principal methodology might cause investors to overlook other important aspects of the rating, the CRA should explain this fact in the ratings announcement, and indicate where a discussion of how the different methodologies and other important aspects factored into the rating decision can be found.
96. Assekurata, Credit Reform, Euler Hermes Rating, URA, European Rating Agency and Companhia Portuguesa de Rating only incorporate in their codes the requirement to indicate for each rating when the rating was last updated in line with the 2004 IOSCO Code. Lince Spa, whose code is based on the IOSCO 2008 version, has not adopted this specific provision in its code and does not explain why.
97. It is not clearly outlined in Fitch's code that each rating should indicate when it was last updated. S&P's code does not state that, where a rating is based on more than one methodology or where a review of only the principal methodology might cause investors to overlook other important aspects of the rating, it will explain where a discussion of how the different methodologies and other important aspects factored in the rating decision can be found.

Provision 3.4

98. This provision states that except for "private ratings" provided only to the issuer, the CRA should disclose to the public, on a non-selective basis and free of charge, any rating regarding publicly issued securities, or public issuers themselves, as well as any subsequent decisions to discontinue such a rating, if the rating action is based in whole or in part on material non-public information.
99. S&P's code indicates that rating actions and the short explanation of the basis for the change will be publicly available for a minimum of 24 hours implying that it could be removed thereafter. CESR interprets this as a deviation.

Provision 3.5

100. This provision outlines that a CRA should publish sufficient information about its procedures, methodologies and assumptions (including financial statement adjustments that deviate materially from those contained in the issuer's published financial statements and a description of the rating committee process, if applicable) so that outside parties can understand how a rating was arrived at by the CRA. This information will include (but not be limited to) the meaning of each rating category and the definition of default or recovery, and the time horizon the CRA used when making a



rating decision.

101. Fitch's code does not specifically replicate this provision of the IOSCO Code but indicates that it will publish a significant amount of information on these areas. Lince Spa's code indicates that it will make sufficient information about its procedures, methodologies and assumptions available to its subscribers but not to the public at large. CESR interprets this as a deviation from the IOSCO Code as members from the public may need to access this information. For example, potential subscribers may want to understand Lince Spa's methodology before subscribing to its rating service.

Provision 3.5.a (new IOSCO provision)

102. This new provision is only specific to structured finance products. It states that where a CRA rates a structured finance product, it should provide investors and/or subscribers (depending on the CRA's business model) with sufficient information about its loss and cash-flow analysis so that an investor allowed to invest in the product can understand the basis for the CRA's rating. A CRA should also disclose the degree to which it analyzes how sensitive a rating of a structured finance product is to changes in the CRA's underlying rating assumptions.
103. S&P's code proposes only to provide 'a brief statement of its analytic rationale' instead of the full set of information potentially needed by an investor to reach an informed investment decision. The type of information needed is described in IOSCO's Code as it is specific to structured finance transactions. This is compounded by the fact that S&P's code indicates that this brief statement is provided for only the initial rating for structured finance products and not subsequently.
104. Whilst DBRS has incorporated this provision within its code, it has also inserted some terms that could weaken the intention of this IOSCO provision.

Provision 3.5.b (new IOSCO provision)

105. This new provision of the IOSCO Code, which is only applicable to structured finance products, states that a CRA should differentiate ratings of structured finance products from traditional corporate bond ratings, preferably through a different rating symbology. A CRA should also disclose how this differentiation functions. A CRA should clearly define a given rating symbol and apply it in a consistent manner for all types of securities to which that symbol is assigned.
106. S&P's code does not include this provision and explains that in S&P's view the use of separate rating symbols or identifiers for structure finance products ratings would not provide any additional information about the meaning and imitations of ratings. Moody's code states that it currently does not use a different symbology for structured finance products and indicates that if it adopted a different scale for its structured finance ratings it would publicly notify the market and clearly define the use and application of such rating symbols. CESR considers that Moody's and S&P's code deviate from the requirement to differentiate ratings of structured finance products from traditional corporate bond ratings.
107. Fitch, AM Best and DBRS's codes do not indicate that they will use a different symbology but state that they will differentiate structured finance products from



traditional corporate bonds ratings through, for example, additional commentary.

Provision 3.5.c (new IOSCO provision)

108. This new provision states that a CRA should assist investors in developing a greater understanding of what a credit rating is, and the limits to which credit ratings can be put to use vis-à-vis a particular type of financial product that the CRA rates. A CRA should clearly indicate the attributes and limitations of each credit opinion, and the limits to which the CRA verifies information provided to it by the issuer or originator of a rated security.
109. Assekurata, Creditreform, Euler Hermes Rating, URA Rating Agentur, European Rating Agency and Companhia Portuguesa de Rating whose codes are based on the 2004 version deviate from this provision.
110. In addition, AM Best and Lince Spa have not included this provision in their codes either and have provided no explanation for this.

Provision 3.8

111. This provision states that in order to promote transparency and to enable the market to best judge the performance of the ratings, the CRA, where possible, should publish sufficient information about the historical default rates of rating categories and whether the default rates of these categories have changed over time, so that interested parties can understand the historical performance of each category and if and how rating categories have changed, and be able to draw quality comparisons among ratings given by different CRAs. If the nature of the rating or other circumstances make a historical default rate inappropriate, statistically invalid, or otherwise likely to mislead the users of the rating, the CRA should explain this. The IOSCO Code also outlines that this information should include verifiable, quantifiable historical information about the weighted and unweighted performance of its rating opinions, organized and structured, and, where possible, standardized in such a way to assist investors in drawing performance comparisons between different CRAs.
112. A number of CRAs' codes of conduct do not indicate that they will publish sufficient information about the historical default rates of rating categories. As with provision 1.2, there are two reasons put forward. One is that they have not been in operation long enough to have sufficient historical performance data and another is the lack of default in the sector/country they rate.
113. CESR acknowledges that it may be difficult for certain CRAs to comply with this provision due to their organisation, size, structure and history. It however encourages them to comply with this requirement and notes that the new EU legislation includes a similar requirement

Provision 3.9

114. This provision states that for each rating, the CRA should disclose whether the issuer participated in the rating process. Each rating not initiated at the request of the issuer should be identified as such. A CRA should also disclose its policies and procedures regarding unsolicited ratings.



115. S&P states that it identifies its unsolicited ratings, but for some ratings that it deems “unsolicited” it may have received certain information from the issuer. S&P does not distinguish those unsolicited ratings for which it has received information from the issuer. It explains this lack of distinction by stating that it only will develop an unsolicited rating where it has sufficient information.
116. URA’s code does not state that it will indicate whether a rating is unsolicited, the issuer participated in the rating process, or its policies and procedures relating to unsolicited ratings. This may be because it does not rate issuers and issuances on an unsolicited basis. However, CESR believes that this is unclear from its code of conduct.

Provision 3.11

117. This provision requires that CRAs should adopt procedures and mechanisms to protect the confidential nature of information shared with them by issuers under the terms of a confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially. Unless otherwise permitted by the confidentiality agreement and consistent with applicable laws or regulations, the CRA and its employees should not disclose confidential information in press releases, through research conferences, to future employers, or in conversations with investors, other issuers, other persons, or otherwise.
118. Lince Spa’s code does not state that it will adopt procedures and mechanisms to protect the confidential nature of information obtained from issuers.

Provision 3.14

119. This provision states that CRA employees should be prohibited from engaging in transactions in securities when they possess confidential information concerning the issuer of such security.
120. Capp&Caap’s code does not include this provision and does not provide any explanation for the deviation.

Provision 3.16

121. This provision states that CRAs’ employees should not selectively disclose any non-public information about rating opinions or possible future rating actions of the CRA, except to the issuer or its designated agents.
122. Lince Spa’s code allows for the selective disclosure of non-public information concerning rating opinions to the user of the rating service, which is prohibited by provision 3.16.

Section 4 of the IOSCO Code: disclosure of the code of conduct and communication with market participants

Provision 4.3 (new IOSCO provision)

123. This provision indicates that a CRA should publish in a prominent position on its home webpage links to (1) the CRA’s code of conduct; (2) a description of the methodologies it



uses; and (3) information about the CRA's historic performance data.

124. This new provision was added in 2008 and Assekurata, Creditreform, Euler Hermes Rating, URA Rating Agentur, European Rating Agency and Companhia Portuguesa de Rating do not include this provision in their codes. Although it is not stated in their code they all make their codes of conduct available on their websites.



VI CONCLUSIONS

The CRAs rating structured finance products

125. The five globally active CRAs (S&P, Moody's, Fitch, AM Best and DBRS), which rate structured finance products, have updated their codes of conduct to take into account most, but not all, of the revisions made to the IOSCO Code in May 2008.
126. In line with its 2008 report to the European Commission, CESR's overall conclusion is that the codes of conduct of S&P, Moody's, Fitch and DBRS are broadly compliant with the IOSCO Code. In addition each CRA has amended its code of conduct to address some of the deviations that CESR identified in its report in 2008. CESR also concludes that AM Best, which is the other globally active CRA analysed as part of this review, is broadly compliant with the IOSCO Code.
127. The five CRAs' codes of conduct do, however, deviate from a number of the provisions of the IOSCO Code and, in CESR's view, do not provide adequate explanations for those deviations. Moreover, in the view of CESR, several of the new provisions of the IOSCO Code that are specific to structured finance products have either not been fully implemented or have been weakened by additional wording within the CRAs' codes.
128. There are two provisions from which most of these CRAs deviate.
 - Moody's, S&P, and Fitch's codes deviate from the requirement to prohibit analysts from making proposals or recommendations regarding the design of the structured finance products since they have typically inserted additional wording into their codes which could weaken the relevant provision as compared with the IOSCO Code.
 - The codes of S&P, Fitch, DBRS and Moody's also deviate from the requirement to disclose in the rating announcement whether the issuer of a structured finance product has informed them that it has publicly disclosed all relevant information about the product being rated or if the information remains non-public.

The other EU CRAs

129. This is the first year that CESR has reviewed the wider population of EU based CRAs, none of which rate structured finance products. Out of the 19 CRAs reviewed by CESR, six have not adopted any code of conduct. CESR recommends that these CRAs adopt the IOSCO Code as a matter of priority. Another two CRAs have adopted codes of conduct but have not made these public and CESR recommends that they publish their codes as required by the IOSCO Code.
130. Out of the 11 CRAs that have published their codes of conduct, three (ECRAI, Lince Spa and Capp&Caap) have adopted the 2008 amendments to the IOSCO code and six have not. In addition, Prof Dr. Schneck Rating and COFACE have adopted the major concepts of the IOSCO Code but have not reproduced a number of the IOSCO Code provisions into their codes. These six CRAs, Prof Dr. Schneck Rating and COFACE have explained that they are awaiting the incoming EU legislation to update their codes of conduct.



CESR acknowledges this point and encourages swift adoption of new codes once the EU legislation is finalised.

131. Overall, CESR concludes that the CRAs which have a public code of conduct are broadly compliant with the IOSCO 2004 Code. CESR strongly encourages these CRAs to update their codes of conduct to reflect the new IOSCO provisions that are not specific to structured finance products and seek to address the other areas of non-compliance identified within this report.
132. CESR expects that the likely significance and impact of the deviations identified for the large CRAs rating structured finance products as well as the other CRAs will be assessed by national authorities and CESR as part of the review of applications for registration of CRAs under the incoming EU legislation. The legislation is expected to contain conditions closely aligned with these provisions of the IOSCO Code and therefore these will be subject to analysis by the relevant authorities under the coordination of supervisory colleges and CESR.