

**CODE OF CONDUCT FUNDAMENTALS FOR CREDIT RATING
AGENCIES**



**A CONSULTATION REPORT OF THE CHAIRMEN'S TASK FORCE
OF THE TECHNICAL COMMITTEE OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

OCTOBER 2004

PREAMBLE

The Chairmen's Task Force of the Technical Committee of the International Organization of Securities Commissions has published for public consultation this Consultation Report on *Code of Conduct Fundamentals for Credit Rating Agencies*. The public is invited to submit comments on this Consultation Report by November 8, 2004. Instructions regarding the submission of comments are set out below.

In September 2003, the IOSCO Technical Committee issued a Statement of Principles Regarding the Activities of Credit Rating Agencies (CRAs). These CRA Principles laid out high-level objectives that CRAs, regulators, issuers and other market participants should strive toward in order to protect the integrity and analytical independence of the credit rating process. The Consultation Report follows on the CRA Principles by offering more specific and detailed guidance to CRAs on how the objectives of the CRA Principles can be achieved in practice.

The CRA Code of Conduct Fundamentals are designed to be a set of measures that should be included in some form or fashion in the codes of conduct of individual CRAs. As currently drafted, these measures are not intended to be rigid or formulaic: when incorporating these measures into their own codes of conduct, CRAs will be able to maintain a degree of flexibility to deal with the different legal and market circumstances in which they operate. However, it is envisioned that securities regulators may decide to incorporate the *CRA Code of Conduct Fundamentals* into their own regulatory oversight of CRAs, may decide to oversee compliance of the *CRA Code of Conduct Fundamentals* directly, may decide to provide for an outside arbitration body to enforce the *CRA Code of Conduct Fundamentals*, or may rely on market mechanisms to enforce compliance if an individual CRA's own code of conduct fails to adequately address the provisions outlined by the *CRA Code of Conduct Fundamentals*.

In developing the Consultation Report, the Chairmen's Task Force sought input from the CRA industry, the Basel Committee of Banking Supervisors, and the International Association of Insurance Supervisors. The Consultation Report will be revised and finalized after consideration of all comments received from the public. In seeking public comment, the Chairmen's Task Force is particularly interested in views of how the provisions contained within the *CRA Code of Conduct Fundamentals* advance the goals of investor protection, fairness, efficiency and transparency in securities markets, and the reduction of systemic risk.

In addition to the Consultation Report itself, the Chairmen's Task Force also seeks public comment on two separate issues:

1. Whether it is *advisable* to require CRAs disclose to issuers beforehand changes to their rating methodologies and rating criteria and whether such a requirement would enhance or undermine investor protection. Such a provision might take the form of a revised Provision 3.9:

Because users of credit ratings rely on an existing awareness of CRA practices, procedures and processes, the CRA should fully and publicly disclose modification of these practices, procedures and processes prior to these modifications going into effect. The CRA should carefully consider the various uses of credit ratings before modifying its practices, procedures and processes. [Underlined language added.]

2. How compliance with the *CRA Code of Conduct Fundamentals* should be best enforced, given different legal and market circumstances in different jurisdictions. The current draft recognizes that different jurisdictions

may adopt different mechanisms to help ensure compliance. Proposals within this framework include direct regulatory oversight, an outside arbitration body (such as the International Chamber of Commerce) that would determine whether a CRA is in compliance with the *CRA Code of Conduct Fundamentals*, as well as market mechanisms. The public is invited to opine on which of these approaches (as well as others) are better suited to achieving the objectives of protecting investors, maintaining fair, efficient and transparent markets, and reducing systemic risk.

After the consultation process, the Chairmen’s Task Force will submit a final version of the CRA Code of Conduct Fundamentals to the IOSCO Technical Committee for approval.

How to Submit Comments

Comments may be submitted by one of three methods. To help us process and review your comments more efficiently, please use only one method.

Important: All comments may be made available to the public.

1. E-mail

- Send comments to mail@oicv.iosco.org.
- The subject line of your message must indicate “Public Comment on *Code of Conduct Fundamentals for Credit Rating Agencies*.”
- If you attach a document, indicate the software used (e.g., WordPerfect, Microsoft WORD, ASCII text, etc.) to create the attachment.
- DO NOT submit attachments as HTML, PDF, GIF, TIFF, PIF, ZIP, or EXE files.

OR

2. Facsimile Transmission

Send by facsimile transmission using the following fax number: 34 (91) 555 93 68.

OR

3. Paper

Send 3 copies of your paper comment letter to:

Philippe Richard
IOSCO Secretary General
Oquendo 12
28006 Madrid
Spain

Your comment letter should indicate prominently that it is a “Public Comment on *Code of Conduct Fundamentals for Credit Rating Agencies*.”

CODE OF CONDUCT FUNDAMENTALS FOR CREDIT RATING AGENCIES

INTRODUCTION

Credit rating agencies (CRAs) can play an important role in modern capital markets. CRAs typically opine on the credit risk of issuers of securities and their financial obligations. Given the vast amount of information available to investors today – some of it valuable, some of it not – CRAs can play a useful role in helping investors and others sift through this information, and analyze the credit risks they face when lending to a particular borrower or when purchasing an issuer’s debt and debt-like securities.¹

In September 2003, IOSCO’s Technical Committee published a Statement of Principles Regarding the Activities of Credit Rating Agencies. The Principles were designed to be a useful tool for securities regulators, rating agencies and others wishing to articulate the terms and conditions under which CRAs operate and the manner in which opinions of CRAs should be used by market participants. Because CRAs are regulated and operate differently in different jurisdictions, the Principles laid out high-level objectives that rating agencies, regulators, issuers and other market participants should strive toward in order to improve investor protection and the fairness, efficiency and transparency of securities markets and reduce systemic risk. The Principles were designed to apply to all types of CRAs operating in various jurisdictions. However, to take into account different market, legal and regulatory circumstances, the manner in which the Principles were to be implemented was left open. The Principles contemplated that a variety of mechanisms could be used, including both market mechanisms and regulation.

Along with the Principles, IOSCO’s Technical Committee also published a Report on the Activities of Credit Rating Agencies that outlined the activities of CRAs, the types of regulatory issues that arise relating to these activities, and how the Principles address these issues. The CRA Report highlighted the growing and sometimes controversial importance placed on CRA assessments and opinions, and found that, in some cases, CRAs activity is not always well understood by investors and issuers alike. Given this lack of understanding, and because CRAs typically are subject to little formal regulation or oversight in most jurisdictions, concerns have been raised regarding the manner in which CRAs protect the integrity of the rating process, ensure that investors and issuers are treated fairly, and safeguard confidential material information provided them by issuers.

Following publication of the CRA Principles, some commenters, including a number of CRAs, suggested that it would be useful if IOSCO were to develop a more specific and detailed code of conduct giving guidance on how the Principles could be implemented in practice. The following Code of Conduct Fundamentals for Credit

¹ CRAs typically provide credit ratings for different types of debts and financial obligations — including, for example, private loans, publicly and privately traded debt securities, preferred shares and other securities that offer a fixed or variable rate of return. For simplicity’s sake, the term “debt and debt-like securities” is used herein to refer to debt securities, preferred shares, and other financial obligations of this sort that CRAs rate.

Rating Agencies is the fruition of this exercise. As with the Principles, with which it should be used, the CRA Code Fundamentals were developed out of discussions among IOSCO members, CRAs, representatives of the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, issuers, and the public at large. The CRA Code Fundamentals offer a set of robust, practical measures that serve as a guide to and a framework for implementing the Principles' objectives. These measures are the fundamentals which should be included in individual CRA codes of conduct, and the elements contained in the CRA Code Fundamentals should receive the full support of CRA management and be backed by thorough compliance and enforcement mechanisms. However, the measures set forth in the CRA Code Fundamentals are not intended to be all-inclusive: CRAs and regulators should consider whether or not additional measures may be necessary to properly implement the Principles in a specific jurisdiction, and the Technical Committee may revisit the CRA Code Fundamentals in the future should experience dictate that modifications are necessary. Further, the CRA Code Fundamentals are not designed to be rigid or formulaic. They are designed to offer CRAs a degree of flexibility in how these measures are incorporated into the individual codes of conduct of the CRAs themselves, according to each CRA's specific legal and market circumstances. However, in developing their own codes of conduct, CRAs should keep in mind that securities regulators may decide to incorporate the CRA Code Fundamentals into their own regulatory oversight, may decide to supervise compliance with the CRA Code Fundamentals, and/or may decide to provide for an outside arbitration body to enforce the CRA Code Fundamentals. Jurisdictions may also rely on market mechanisms to enforce compliance with the CRA Code Fundamentals, as the market may judge a CRA adversely if its own code of conduct fails to address the provisions contained in the CRA Code Fundamentals.

Finally, the CRA Code Fundamentals address measures that CRAs should adopt to help ensure that the CRA Principles are properly implemented. The CRA Code Fundamentals do not address the equally important obligations issuers have of cooperating with and providing accurate and complete information to the marketplace and the CRAs they solicit to provide ratings. While aspects of the CRA Code Fundamentals deal with a CRA's duties to issuers, the essential purpose of the CRA Code Fundamentals is to promote investor protection by safeguarding the integrity of the rating process. IOSCO members recognize that credit ratings, despite their numerous other uses, exist primarily to help investors assess the credit risks they face when making certain kinds of investments. Maintaining the independence of CRAs vis-à-vis the issuers they rate is vital to achieving this goal. Provisions of the CRA Code Fundamentals dealing with CRA obligations to issuers are designed to improve the quality of credit ratings and their usefulness to investors. These provisions should not be interpreted in ways that undermine the independence of CRAs or their ability to issue timely ratings opinions.

Like the IOSCO CRA Principles, the objectives of which are reflected herein, the CRA Code Fundamentals are also intended to be useful to all types of CRAs relying on a variety of different business models. The CRA Code Fundamentals do not indicate a preference for one business model over another, nor are the measures described therein designed to be used only by CRAs with large staffs and compliance functions. Accordingly, the types of mechanisms and procedures CRAs adopt to

ensure that the provisions of the CRA Code Fundamentals are followed will vary according to the market and legal circumstances in which the CRA operates.

Structurally, the CRA Code Fundamentals are broken into three sections and draw upon the organization and substance of the Principles themselves:

- ◆ The Quality and Integrity of the Rating Process;
- ◆ CRA Independence and the Avoidance of Conflicts of Interest; and,
- ◆ CRA Responsibilities to the Investing Public and Issuers.

TERMS

The CRA Code Fundamentals are designed to apply to any CRA and any person employed by a CRA in either a full-time or part-time capacity. A CRA employee who is primarily employed as a credit analyst is referred to as an “analyst.”

For the purposes of the CRA Code Fundamentals, the terms “CRA” and “credit rating agency” refer to:

- ◆ Those entities whose primary business is the issuance of credit ratings for the purposes of evaluating the credit risk of issuers or debt and debt-like securities; or
- ◆ Any organization whose ratings are recognized for regulatory purposes by a financial regulatory authority.

For the purposes of the CRA Code Fundamentals, a “credit rating” is an opinion forecasting the creditworthiness of an entity, a credit commitment, a debt or debt-like security or an issuer of such obligations, expressed using an established and defined ranking system. As described in the CRA Report, credit ratings are not recommendations to purchase or sell any security.

THE IOSCO CODE OF CONDUCT REGARDING THE ACTIVITIES OF CREDIT RATING AGENCIES

As described in the IOSCO CRA Principles, CRAs should endeavor to issue opinions that help reduce the asymmetry of information that exists between borrowers and debt and debt-like securities issuers, on one side, and lenders and the purchasers of debt and debt-like securities on the other. Rating analyses of low quality or produced through a process of questionable integrity are of little use to market participants. Stale ratings that fail to reflect changes to an issuer’s financial condition or prospects may mislead market participants. Likewise, conflicts of interest or other undue factors – internal and external – that might, or even appear to, impinge upon the independence of a rating decision can seriously undermine a CRA’s credibility. Where conflicts of interest or a lack of independence is common at a CRA and hidden from investors, overall investor confidence in the transparency and integrity of a market can be harmed. CRAs also have responsibilities to the investing public and to

issuers themselves, including a responsibility to protect the confidentiality of some types of information issuers share with them.

To help achieve the objectives outlined in the CRA Principles, which should be read in conjunction with the CRA Code Fundamentals, CRAs should adopt, publish and adhere to a Code of Conduct containing the following measures:

1. QUALITY AND INTEGRITY OF THE RATING PROCESS

A. Quality of the Rating Process

- 1.1 The CRA should adopt, implement and enforce written procedures and methodologies to ensure that the opinions it disseminates are based on a thorough analysis of all relevant information available to the CRA.*
- 1.2 The 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.*
- 1.3 In assessing an issuer's creditworthiness, analysts involved in the preparation or review of any rating action should use methodologies established by the CRA.*
- 1.4 Credit ratings should be assigned by the CRA and not by any individual analyst employed by the CRA; ratings should reflect all public and non-public information known, and believed to be relevant, to the CRA; and the CRA should use people who, individually or collectively have appropriate knowledge and experience in developing a rating opinion for the type of credit being applied.*
- 1.5 The CRA should maintain internal records to support its credit opinions for a reasonable period of time or in accordance with applicable law.*
- 1.6 The CRA and its analysts should take steps to avoid issuing any credit analyses or reports that contain misrepresentations or are otherwise misleading as to the general creditworthiness of an issuer or obligation.*
- 1.7 The CRA should ensure that it has and devotes sufficient resources to carry out high-quality credit assessments of all obligations and issuers it rates. When deciding whether to rate or continue rating an obligation or issuer, it should assess whether it is able to devote sufficient personnel with sufficient skill sets to make a proper rating assessment, and whether its personnel likely will have access to sufficient information needed in order make such an assessment.*
- 1.8 The CRA should structure its rating teams to promote continuity and avoid bias in the rating process.*

B. Monitoring and Updating

- 1.9 *Except for “point in time” ratings that clearly indicate they do not entail ongoing surveillance, once a rating is published, the CRA should monitor on an ongoing basis and update the rating by:*
- a. *regularly reviewing the issuer’s creditworthiness;*
 - b. *initiating a review of the status of the rating upon receipt of any information that might reasonably be expected to result in a rating action (including termination of a rating); and,*
 - c. *updating on a timely basis the rating, as appropriate, based on the results of such review.*
- 1.10 *Where a CRA makes its ratings available to the public, the CRA should publicly announce if it discontinues rating an issuer or obligation. 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. 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. 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.*

C. Integrity of the Rating Process

- 1.11 *The CRA and its employees should comply with all applicable laws, rules and regulations governing its activities in each jurisdiction in which it operates.*
- 1.12 *The CRA and its employees should deal fairly and honestly with issuers, investors, other market participants, and the public.*
- 1.13 *The CRA’s analysts should be held to high standards of integrity, and the CRA will not employ individuals with demonstrably compromised integrity.*
- 1.14 *The CRA and its employees should not, either implicitly or explicitly, give issuers any assurance or guarantee of a particular rating prior to a rating assessment.*
- 1.15 *The CRA should institute policies and procedures that clearly specify a person responsible for the CRA’s and the CRA’s employees’ compliance with the provisions of the CRA’s code of conduct and with applicable laws and regulations. This person’s reporting lines and compensation should be independent of the CRA’s rating operations.*
- 1.16 *Upon becoming aware that another employee or entity associated 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. Its employees are not necessarily expected to be experts in the law. Nonetheless, its employees are expected to report the activities that a reasonable person would question. Any CRA officer who receives such a report from a CRA employee is obligated to take appropriate action, as determined by the laws and regulations of the jurisdiction and the rules and guidelines set forth by the CRA.

2. CRA INDEPENDENCE AND AVOIDANCE OF CONFLICTS OF INTEREST

A. General

- 2.1 The CRA and its analysts should use care and professional judgment to maintain both the substance and appearance of independence and objectivity.*
- 2.2 The determination of a credit rating should be influenced only by factors relevant to the credit assessment.*
- 2.3 The CRA should not forbear or refrain from taking a rating action based on the potential effect (economic, political, or otherwise) of the action on the CRA, an issuer, an investor, or other market participant.*
- 2.4 The credit rating a CRA assigns to an issuer or security should not be affected by the existence of or potential for a business relationship between the CRA (or its affiliates) and the issuer (or its affiliates) or any other party, or the non-existence of such a relationship.*
- 2.5 The CRA should separate its credit rating business and CRA analysts from any other businesses of the CRA, including consulting businesses, that may present a conflict of interest.*

B. CRA Procedures and Policies

- 2.6 The CRA should adopt written internal procedures and mechanisms to (1) identify, and (2) eliminate, or manage and disclose, as appropriate, any actual or potential conflicts of interest that may influence the opinions and analyses CRAs make or the judgment and analyses of the individuals the CRAs employ who have an influence on ratings decisions. The CRA's code of conduct should also state that the CRA will disclose such conflict avoidance and management measures.*
- 2.7 The CRA's disclosures of actual and potential conflicts of interest should be complete, timely, clear, concise, specific and prominent.*
- 2.8 The CRA should disclose the general nature of its compensation arrangements with rated entities. Where a CRA receives from a rated entity compensation unrelated to its rating service, such as compensation for*

consulting services, the CRA should disclose the proportion such non-rating fees constitute against the fees the CRA receives from the entity for ratings services.

- 2.9 *The CRA and its staff should not engage in any securities or derivatives trading presenting conflicts of interest with the CRA's ratings activities.*
- 2.10 *In instances where rated entities (e.g., governments) have, or are simultaneously pursuing, oversight functions related to the CRA, the CRA should use different employees to conduct its rating actions than those employees involved in its oversight issues.*

C. CRA Analyst and Employee Independence

- 2.11 *Reporting lines for CRA employees and their compensation arrangements should be structured to eliminate or effectively manage actual and potential conflicts of interest. The CRA's code of conduct should also state that a CRA analyst will 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.*
- 2.12 *The CRA should not have analysts initiate, or participate in, discussions regarding fees or payments with any entity they rate.*
- 2.13 *No CRA employee should participate in or otherwise influence the determination of the CRA's rating of any particular entity or obligation if the employee:*
 - a. *Owns securities or derivatives of the rated entity or any related entity thereof;*
 - b. *Has had an employment or other significant business relationship with the rated entity within the previous six months;*
 - c. *Has an immediate relation (i.e., spouse, partner, parent, child, sibling) who currently works for the rated entity; or*
 - d. *Has, or had, any other relationship with the rated entity or any agent of the rated entity that may be perceived as presenting a conflict of interest.*
- 2.14 *The CRA's analysts and anyone involved in the rating process (or members of their immediate household) 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 mutual funds.*
- 2.15 *CRA employees should be prohibited from soliciting money, gifts or favors from anyone with whom the CRA does business and should be prohibited*

from accepting gifts offered in the form of cash or any gifts exceeding a minimal monetary value.

- 2.16 *Any CRA analyst who becomes involved in any personal relationship that creates the potential for any real or apparent conflict of interest (including, for example, any personal relationship with an employee of a rated entity or agent of such entity within his or her area of analytic responsibility), should be required to disclose such relationship to the appropriate manager or officer of the CRA, as determined by CRA compliance policies.*

3. CRA RESPONSIBILITIES TO THE INVESTING PUBLIC AND ISSUERS

A. Transparency and Timeliness of Ratings Disclosure

- 3.1 *The CRA should distribute in a timely manner its ratings decisions regarding the entities and securities it rates.*
- 3.2 *The CRA should publicly disclose its policies for distributing ratings and reports.*
- 3.3 *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.*
- 3.4 *The CRA should publish sufficient information about its procedures, methodologies and assumptions 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 and the time horizon the CRA used when making a rating decision.*
- 3.5 *When issuing a rating, CRAs should explain in their press releases and reports the key elements underlying their rating decision.*
- 3.6 *Where feasible and appropriate, prior to issuing or revising a rating, the CRA should advise the issuer of the critical information and principal considerations upon which a rating will be based and afford the issuer an opportunity to clarify any likely factual misperceptions or other matters that the CRA would wish to be made aware of in order to produce an accurate rating. The CRA will duly evaluate the response.*
- 3.7 *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 CRA 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 ratings 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.

- 3.8 *The CRA should disclose when its ratings are not initiated at the request of the issuer and whether the issuer participated in the rating process.*
- 3.9 *Because users of credit ratings rely on an existing awareness of CRA practices, procedures and processes, the CRA should fully and publicly disclose modification of these practices, procedures and processes. The CRA should carefully consider the various uses of credit ratings before modifying its practices, procedures and processes.*

B. The Treatment of Confidential Information

- 3.10 *The CRA 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 or required by applicable laws or regulations, the CRA and its employees should not disclose confidential information in press releases, through research conferences, to future employers, or conversations with investors, other issuers, or other persons, or otherwise.*
- 3.11 *Where a CRA is made aware of non-public information of the kind required to be disclosed under applicable laws and regulations, depending on the jurisdiction, the CRA may be obligated to make this information available to the public. However, prior to doing so, the CRA should indicate to the issuer its intent to release this information and permit the issuer to immediately disclose this information itself. The timeframe a CRA should provide an issuer to make this disclosure should be limited.*
- 3.12 *The CRAs should use confidential information only for purposes related to their rating activities or otherwise in accordance with their confidentiality agreements with the issuer.*
- 3.13 *CRA employees should take all reasonable measures to protect all property and records belonging to or in possession of the CRA from fraud, theft or misuse.*
- 3.14 *CRA employees should be prohibited from engaging in transactions in securities when they possess confidential information concerning the issuer of such security.*
- 3.15 *In preservation of confidential information, CRA employees should familiarize themselves with the internal securities trading policies maintained by their employer, and periodically certify their compliance as required by such policies.*

- 3.16 *CRA employees should not selectively disclose any non-public information about rating opinions or possible future rating actions of the CRA.*
- 3.17 *CRA employees should not share confidential information entrusted to the CRA with employees of any affiliated entities that are not CRAs. CRA employees should not share confidential information within the CRA except on an “as needed” basis.*
- 3.18 *CRA employees should not use or share confidential information for the purpose of trading securities, or for any other purpose except the conduct of the CRA’s business.*

4. DISCLOSURE OF THE CODE OF CONDUCT

- 4.1 *The CRA should disclose to the public its code of conduct and describe how the provisions of its code of conduct are consistent with the provisions of the IOSCO Principles Regarding the Activities of Credit Rating Agencies and the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies. The CRA should also describe generally how it intends to implement and enforce its code of conduct and disclose on a timely basis any changes to its code of conduct or how it is implemented and enforced.*