

SECURITIES & EXCHANGE BOARD OF INDIA

Amendment to SEBI (Credit Rating Agencies) Regulations, 1999

Background:

1. Regulation 14(g) of SEBI (Credit Rating Agencies) Regulations, 1999 requires that the CRA shall enter into a written agreement with the client in which the client shall agree to obtain a rating from at least two CRAs where the size of issue of debt securities is equal to or exceeds Rs 100 crores. However, there are different requirements about rating of debt instruments in the SEBI (Issue and Listing of Debt Securities) Regulations 2008 (Debt Regulations), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008 and SEBI (Credit Rating Agencies) Regulations, 1999 (CRA Regulations).
2. Prior to December 2007, the erstwhile norms for public issue of debt securities, namely SEBI (Disclosure and Investor Protection) Guidelines, 2000 required issuers to obtain credit rating from two rating agencies and disclose the same in offer document. With a view to reduce the cost of issuance of debt instruments, SEBI, vide circular dated December 03, 2007 amended the aforesaid Guidelines to state that credit rating from one rating agency would be sufficient. The same was also incorporated in SEBI (Issue and Listing of Debt Securities) Regulations, 2008 which were notified on June 6, 2008.
3. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, require credit rating from one or more credit rating agencies in case of a public issue or rights issue of convertible debt instruments or roll over of non-convertible portion of partly convertible debt instrument.

4. However, SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008 state that no special purpose distinct entity shall offer securitized debt instruments to the public unless credit rating is obtained from not less than two registered credit rating agencies.
5. It may be pertinent to mention that SEBI (Credit Rating Agencies) Regulations, 1999 fulfill the requirements of IOSCO Code of Conduct Fundamentals of CRAs. Detailed descriptions have been provided in the attached table.

Proposal

6. In order to align the provisions of SEBI (Credit Rating Agencies) Regulations, 1999, with the above regulations it is suggested that regulation 14(g) of SEBI (Credit Rating Agencies) Regulations, 1999 may be amended to state that the client shall agree to obtain a rating for the issue of securities in accordance with the provisions of SEBI regulations as applicable. We may not mention specific number of ratings to avoid any inconsistency in future in the event of any amendment to the aforesaid three sets of regulations relating to issue of capital.
7. The Board is requested to approve the above proposal and authorize the Chairman to carry out necessary amendments in the SEBI (Credit Rating Agencies), Regulations, 1999 with consequential changes, as may be required.

ANNEXURE

SEBI's position vis-à-vis main recommendations of IOSCO Code of Conduct

S.No.	IOSCO Code of Conduct Fundamentals for CRAs	SEBI's position vis-à-vis IOSCO Code of Conduct
1.	<p>Quality and Integrity of Rating Process –</p> <p>A. Quality of the Rating Process</p>	
	1.1 A CRA should adopt, implement and enforce written procedures to ensure that the opinions it disseminates are based on a thorough analysis of all information known to the CRA that is relevant to its analysis according to the CRA's published rating methodology.	Covered in code of conduct specified in SEBI (Credit Rating Agencies) Regulations, 1999.
	1.2 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.	Covered in code of conduct specified in SEBI (Credit Rating Agencies) Regulations, 1999.
	1.3 A CRA should maintain internal records to support its credit opinions for a reasonable period of time or in accordance with applicable law.	Covered in code of conduct specified in SEBI (Credit Rating Agencies) Regulations, 1999.
	1.4 A 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.	Covered in code of conduct specified in SEBI (Credit Rating Agencies) Regulations, 1999.
	1.5 A CRA should ensure that it has and devotes sufficient resources to carry out high-quality	Covered in code of conduct specified in SEBI (Credit

	credit assessments of all obligations and issuers it rates.	Rating Agencies) Regulations, 1999.
1.6	A CRA should establish and implement a rigorous and formal review function.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999.
1.7	A CRA should structure its rating teams to promote continuity and avoid bias in the rating process.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999.
B. Monitoring and Updating		
1	A CRA should ensure that adequate personnel and financial resources are allocated to monitoring and updating its ratings.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999.
C. Integrity of the Rating Process		
1.1	A CRA and its employees should comply with all applicable laws and regulations governing its activities in each jurisdiction in which it operates.	Covered in code of conduct specified in SEBI (Credit Rating Agencies) Regulations, 1999.
1.2	A CRA and its employees should deal fairly and honestly with issuers, investors, other market participants, and the public.	Covered in code of conduct specified in SEBI (Credit Rating Agencies) Regulations, 1999.
1.3	A CRA's analysts should be held to high standards of integrity, and a CRA should not employ individuals with demonstrably compromised integrity.	Covered in code of conduct specified in SEBI (Credit Rating Agencies) Regulations, 1999.
1.4	A CRA 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.	Covered in code of conduct specified in SEBI (Credit Rating Agencies) Regulations, 1999.

2.	CRA INDEPENDENCE AND AVOIDANCE OF CONFLICTS OF INTEREST A. General	
	1. A CRA and its analysts should use care and professional judgment to maintain both the substance and appearance of independence and objectivity.	Covered in code of conduct specified in SEBI (Credit Rating Agencies) Regulations, 1999.
	2. The determination of a credit rating should be influenced only by factors relevant to the credit assessment.	Covered in code of conduct specified in SEBI (Credit Rating Agencies) Regulations, 1999.
	3. 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.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and code of conduct specified therein.
	B. CRA Procedures and Policies	
	1. A 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 a CRA makes or the judgment and analyses of the individuals a CRA employs who have an influence on ratings decisions.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and code of conduct specified therein. Also covered in SEBI circular – ‘ Guidelines for CRAs’, dated May 3, 2010
	2. A CRA should disclose the general nature of its compensation arrangements with rated entities.	Covered in SEBI circular – ‘ Guidelines for CRAs’, dated May 3, 2010
	3. A CRA and its employees should not engage in any securities or derivatives trading presenting	Covered in SEBI (Credit Rating Agencies)

	conflicts of interest with the CRA's rating activities.	Regulations, 1999 and code of conduct specified therein. Also covered in SEBI circular – ' Guidelines for CRAs', dated May 3, 2010
	C. CRA Analyst and Employee Independence	
	1. 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.	Covered in SEBI circular – ' Guidelines for CRAs', dated May 3, 2010
	2. No CRA employee should participate in or otherwise influence the determination of the CRA's rating of any particular entity or obligation	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and code of conduct specified therein.
	3. 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.	Covered in SEBI circular – ' Guidelines for CRAs', dated May 3, 2010
3.	CRA RESPONSIBILITIES TO THE INVESTING PUBLIC AND ISSUERS	
	A. Transparency and Timeliness of Ratings Disclosure	
	1. A CRA should distribute in a timely manner its ratings decisions regarding the entities and securities it rates.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and code of conduct specified therein. Also covered in SEBI circular – ' Guidelines for

		CRAs', dated May 3, 2010
	2. A CRA should publicly disclose its policies for distributing ratings, reports and updates.	Covered in SEBI circular – 'Guidelines for CRAs', dated May 3, 2010
	3. A CRA should indicate with each of its ratings when the rating was last updated. 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.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and code of conduct specified therein. Also covered in SEBI circular – 'Guidelines for CRAs', dated May 3, 2010
	4. 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.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and SEBI circular – 'Guidelines for CRAs', dated May 3, 2010
	5. 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.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and SEBI circular – 'Guidelines for CRAs', dated May 3, 2010
	6. 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	Covered in SEBI circular – 'Guidelines for CRAs', dated May 3, 2010

	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.	
	7. 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.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and SEBI circular – ‘ Guidelines for CRAs’, dated May 3, 2010
B. The Treatment of Confidential Information		
	1. A 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.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and code of conduct specified therein.
	2. A CRA should use confidential information only for purposes related to its rating activities or otherwise in accordance with any confidentiality agreements with the issuer.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and code of conduct specified therein.
	3. CRA employees should be prohibited from engaging in transactions in securities when they possess confidential information concerning the issuer of such security.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and code of conduct specified therein.
	4. 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.	Covered in SEBI (Credit Rating Agencies) Regulations, 1999 and code of conduct specified therein.

4.	Disclosure Of The Code Of Conduct And Communication With Market Participants	
	1. A CRA should disclose to the public its code of conduct and describe how the provisions of its code of conduct fully implement the provisions of the IOSCO Principles Regarding the Activities of Credit Rating Agencies and the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies.	Covered in SEBI circular – ‘Guidelines for CRAs’, dated May 3, 2010
	2. 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.	Covered in SEBI circular – ‘Guidelines for CRAs’, dated May 3, 2010
