

## Appendix 2

In this Annex amendments to chapter 2 are shown by underlining new text and striking through deleted text.

As the whole **chapter 8 is new text, it is not underlined** in the usual manner.



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# The DFSA Rulebook

Conduct of Business Module

**(COB)**

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## 2 CLIENT CLASSIFICATION

### 2.1 Application

- 2.1.1**
- (1) This chapter applies, subject to (3) and (4), to an Authorised Firm, ~~other than an Authorised ISPV~~, carrying on or intending to carry on any Financial Service with or for a Person.
  - (2) For the purposes of this chapter, a Person includes a Fund or trust, even if it does not have a separate legal personality.
  - (3) This chapter applies to a Credit Rating Agency only if and to the extent that it intends to carry on, or carries on, a Financial Service other than Operating a Credit Rating Agency.
  - (4) This chapter does not apply to an Authorised ISPV.

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## **8 SPECIFIC RULES – OPERATING A CREDIT RATING AGENCY**

### **8.1 Application**

- 8.1.1** (1) This chapter applies to every Person who carries on, or intends to carry on, the Financial Service of Operating a Credit Rating Agency in or from the DIFC.
- (2) In this chapter, where a reference is made to a Rating Subject which is a credit commitment, a debt or a debt-like Investment referred to in GEN Rule 2.27.1(3)(b) or (c), that reference is to be read, where the context requires, as a reference to the Person responsible for obtaining the Credit Rating.

#### **Guidance**

1. The Financial Service of Operating a Credit Rating Agency is defined in GEN Rule 2.27.1. This chapter contains the specific conduct requirements that apply to Persons carrying on the Financial Service of Operating a Credit Rating Agency.

#### **Code of conduct/ethics**

2. The outcome intended by some of the specific conduct requirements in this chapter can be achieved by adopting a code of conduct/ethics. Whilst not proposing to prescribe that a Credit Rating Agency must have a code of conduct/ethics, a Credit Rating Agency should consider, particularly where noted in relation to specific Rules, adopting such a code as a means of achieving the outcome intended by the relevant requirements. However, where a Credit Rating Agency does not adopt such a code, the onus is on the Credit Rating Agency to demonstrate how it achieves compliance with the relevant requirements through other means.

#### **Persons responsible for obtaining a Credit Rating**

3. Not all Rating Subjects are bodies corporate. For example, Credit Ratings can be provided in respect of a credit commitment given by a Person, or a debt or debt-like Investment. In such instances, where a Rule in this chapter requires the Rating Subject to carry out some activity, such a reference is to be read, pursuant to Rule 8.1.1(2), as a reference to the Person who is responsible for obtaining the Credit Rating. Such a Person would generally be the originator, arranger or sponsor of the relevant financial product which is being rated. The Credit Rating Agency should clearly identify the Person responsible for a Rating Subject before proceeding with its Credit Rating Activities relating to that Rating Subject.
3. However, there is no restriction against more than one Person being identified as Persons responsible for obtaining a Credit Rating relating to a Rating Subject. In such cases, a Credit Rating Agency should clearly identify those Persons as responsible Persons relating to the relevant Rating Subject.

### **8.2 Additional Principles for Credit Rating Agencies**

#### **Guidance**

Credit Rating Agencies are required to comply with, in addition to the Principles in GEN sections 4.1 and 4.2, three further Principles set out in this section.

**Principle 1 – Quality and integrity**

- 8.2.1** A Credit Rating Agency must ensure that its Credit Ratings are well founded and are based on a fair and thorough analysis of all relevant information which is reasonably known to, or obtainable by, the Credit Rating Agency.

**Principle 2 – Independence and conflicts of interest**

- 8.2.2** A Credit Rating Agency must ensure that its decisions relating to Credit Ratings are independent and free from political or economic pressures and not affected by conflicts of interest arising due to its ownership structure or business or other activities or conflicts of interest of its Employees.

**Principle 3 – Transparency and disclosure**

- 8.2.3** A Credit Rating Agency must conduct its Credit Rating Activities in a transparent and responsible manner.

**8.3 Quality of the rating process****Policies and procedures**

- 8.3.1** (1) A Credit Rating Agency must adopt, implement and enforce policies, procedures and controls that are adequate to ensure that:
- (a) its Credit Ratings are based on a thorough and fair analysis of all the Relevant Information;
  - (b) it has clearly defined methodologies and models for the purposes of preparing and reviewing Credit Ratings; and
  - (c) its Rating Analysts, in preparing and reviewing Credit Ratings, adhere to the relevant methodologies and models adopted by the Credit Rating Agency, including any updates of such methodologies and models.
- (2) For the purposes of (1)(a), Relevant Information is information which is:
- (a) reasonably known to, or obtainable by, the Credit Rating Agency; and
  - (b) required, pursuant to the established rating methodologies and models adopted by the Credit Rating Agency.
- (3) For the purposes of (1)(c), a Rating Analyst means an Employee of a Credit Rating Agency who performs analytical functions in relation to the preparation or review of a Credit Rating.

- (4) A Credit Rating Agency must have adequate mechanisms to monitor whether its policies, procedures and controls are implemented in such a way so as to ensure that they operate, on an on-going basis, effectively and as intended.

### **Guidance**

#### **Application to Groups and Branches**

1. Where a Credit Rating Agency is a member of a Group, the Credit Rating Agency may rely on the policies, procedures and controls adopted at the group-wide level. Where this is the case, the Credit Rating Agency should ensure that the group-wide policies, procedures and controls are consistent with the requirements applicable to it and do not constrain its ability to comply with the applicable requirements in the DIFC.
2. In the case of Branch operations, the DFSA will only grant an authorisation to conduct the Financial Service of Operating a Credit Rating Agency where it is satisfied with the adequacy of the home jurisdiction regulation of the relevant legal entity.
3. Considerations set out in Guidance No 1 and 2 are equally relevant to the other requirements applicable to CRAs which are set out in this chapter.

#### **Periodic review**

4. A Credit Rating Agency should ensure that there is a formal and rigorous periodic review (at least annually) of the effectiveness of its systems and controls, including the methodologies and models it uses, to ensure that they remain effective and adequate in light of factors such as changing market conditions and practices and matters that have a material impact on the users of Credit Ratings.
5. Such a review should be carried out by individuals who are not involved in the day-to-day management or operations of the Credit Rating Agency. Taking into account the nature, scale and complexity of its business, a Credit Rating Agency may undertake such a review through a designated function at the group-wide level, or using external consultants. The DFSA expects the findings of such a review to be made available to the Governing Body and the senior management of the Credit Rating Agency, and that any inadequacies identified are promptly and effectively addressed.

#### **Analysts**

6. By definition, the Employees of a Credit Rating Agency include Rating Analysts who are either employed by the Credit Rating Agency or appointed under a contract for services to perform analytical functions in relation to the preparation of Credit Ratings. Such appointed Rating Analysts may, in the case of a Credit Rating Agency which is part of a Group, be employed by another entity within the Group. In that case, the Credit Rating Agency should ensure that such Rating Analysts comply with the applicable DFSA Rules when conducting Credit Rating Activities on its behalf.

#### **Relevant Information**

7. See Guidance under Rule 8.3.4.

**Methodologies and models**

**8.3.2** For the purposes of producing and reviewing Credit Ratings, a Credit Rating Agency must adopt and use rating methodologies and models, including any key rating assumptions, which:

- (a) are rigorous and systematic;
- (b) to the extent possible, result in Credit Ratings that can be subjected to some form of objective validation based on historical experience;
- (c) are subject to periodic review as appropriate; and
- (d) are made public, including any changes made to such methodologies and models.

**Guidance**

1. A Credit Rating Agency will need to establish proper procedures for the regular review of its methodologies and models, including any key rating assumptions used in such methodologies and models, in order to be able to properly assess the Relevant Information and prepare credible and high quality Credit Ratings. Any changes to the methodologies and models should incorporate cumulative experience gained through on-going market surveillance.
2. Where any material modifications are made to the methodologies or models used by the Credit Rating Agency, it should make prior disclosure to the public of such modifications before applying the modified methodologies and models, especially to existing Credit Ratings.
3. A Credit Rating Agency should assess whether existing methodologies and models for providing a Credit Rating in respect of structured financial products remain appropriate where the risk characteristics of the assets underlying a structured product change materially.

**Rating Analysts**

**8.3.3** A Credit Rating Agency must ensure that its Rating Analysts:

- (a) have adequate and appropriate knowledge and experience to carry out Credit Rating Activities assigned to them;
- (b) have access to, and use, all the Relevant Information;
- (c) apply the relevant methodologies and models in a transparent and consistent manner;
- (d) act without bias in carrying out their functions; and
- (e) observe high standards of integrity.

**Guidance**

1. See GEN Rules 5.3.8 and 5.3.19 with regard to the assessment that a Credit Rating Agency, as an Authorised Firm, needs to undertake to ensure that its Employees (including Rating Analysts) are fit and proper and have adequate competencies in order to carry out their functions.
2. A Credit Rating Agency should structure its rating teams in such a way so as to promote continuity of adequate skills and expertise within a relevant team, and avoidance of bias in the preparation or review of a Credit Rating. For the purpose of promoting objectivity and lack of bias in preparing or reviewing Credit Ratings, measures such as periodic rotation of Rating Analysts, as appropriate, should be considered.

**Credit Ratings****8.3.4** A Credit Rating Agency must ensure that:

- (a) the role and responsibility of assigning a Credit Rating rests clearly on the Credit Rating Agency and not on any of its Rating Analysts;
- (b) the information it uses for the purposes of preparing or reviewing a Credit Rating is of sufficient quality to support a credible Credit Rating;
- (c) its Credit Ratings:
  - (i) reflect all the Relevant Information;
  - (ii) do not contain any misrepresentations, and are not misleading in respect of the creditworthiness of the Rating Subject; and
  - (iii) contain clear and prominent statements if they are premised on limited historical data, are not subject to on-going surveillance or are subject to any other limitation which has or may have a material impact on the relevant Credit Rating; and
- (d) it does not produce a Credit Rating where the complexity of, or the lack of adequate information relating to, a potential Rating Subject raises reasonable doubts as to whether a credible Credit Rating can be produced.

**Guidance**

Relevant Information is defined in Rule 8.3.1(2). A Credit Rating Agency should adopt adequate measures to ensure that the quality of information it uses is reliable to support a credible Credit Rating. Such measures may include:

- a. relying on independently audited financial statements and public disclosures where available;
- b. conducting random sampling examination of the information received; and
- c. having contractual arrangements with Persons who request a Credit Rating, or any third party source from whom information is obtained, that render such Persons liable if they knowingly provide materially false or misleading information, or fail to conduct due

diligence they are reasonably expected to carry out to verify the accuracy of the Relevant Information.

### **On-going monitoring and review of the Credit Ratings**

- 8.3.5** (1) Unless a Credit Rating clearly states that it will not be subject to on-going review, a Credit Rating Agency must:
- (a) have adequate personnel and financial resources committed for the on-going surveillance of the creditworthiness of the Rating Subject;
  - (b) ensure a review of a Credit Rating is undertaken regularly, and in any case, immediately upon becoming aware of information reasonably likely to result in a Rating Action; and
  - (c) take any appropriate Rating Action promptly.
- (2) For the purposes of (1), a Rating Action is an upward or downward move of a Credit Rating, a confirmation of an existing Credit Rating or a withdrawal of a Credit Rating.
- (3) Following the review in (1)(b), a Credit Rating Agency must issue a notice of its Rating Action. Such a notice must:
- (a) be promptly disseminated to the public or distributed by subscription, as applicable; and
  - (b) contain a clear and prominent statement specifying:
    - (i) the date on which the Credit Rating was last updated; and
    - (ii) the date on which the new Credit Rating is effective; or
    - (iii) if the Credit Rating is withdrawn, the effective date from which it is withdrawn and the reasons for such withdrawal.
- (4) Without prejudice to the obligation to conduct on-going surveillance and review of a Credit Rating, where a Credit Rating Agency forms an opinion on reasonable grounds that it does not have adequate or credible Relevant Information, it must not support an existing Credit Rating, and must withdraw such a Credit Rating immediately. Where it does so, it must issue a notice of withdrawal of the Credit Rating in accordance with (3).

### **Guidance**

1. A Credit Rating Agency may use separate teams of Rating Analysts for determining initial Credit Ratings and subsequent review of such ratings. It should ensure that each team has the requisite level of expertise and resources to perform its functions effectively.



2. A Credit Rating Agency should undertake both periodic and ad hoc reviews of its Credit Ratings as appropriate to the nature of the Rating Subject, the market conditions and reasonable expectations of users of such Credit Ratings. Such reviews should apply any changes in its rating methodologies and models, including rating assumptions.
3. A Credit Rating Agency should have clear and published parameters relating to the review of Credit Ratings, including, to the extent possible, when it will undertake any ad hoc reviews. Such parameters should include any material change in the risk characteristics of the Rating Subject or significant changes in the markets which relate to, or affect, the Rating Subject.
4. A Credit Rating Agency may place under surveillance a Rating Subject upon becoming aware of any material changes relating to, or affecting, it. A Credit Rating Agency should consider whether, in such circumstances, it is appropriate to give any prior notice that the relevant Rating Subject is under surveillance.

## **8.4 Integrity of the credit rating process**

### **Policies and procedures**

- 8.4.1** To promote integrity of its credit rating process, a Credit Rating Agency must implement adequate policies, procedures and controls to ensure that it and its Employees:
- (a) comply with all the applicable legal and other requirements, including those relating to its Credit Rating Activities, regardless of where such activities are carried on;
  - (b) deal fairly and honestly with Rating Subjects and Persons using or relying on its Credit Ratings, such as investors and other market participants, including the public; and
  - (c) do not, either expressly or implicitly, give any assurances or guarantees of a particular rating outcome before undertaking a full analysis of the Relevant Information in accordance with the applicable methodologies and models.

### **Guidance**

1. Where a Credit Rating Agency undertakes activities in a number of jurisdictions, the effect of Rule 8.4.1 is that it will need to ensure that respective obligations arising in all those jurisdictions are effectively met as appropriate. In doing so, it will need to take account of the application of the DFSA regime to Group and Branch operations (see Guidance 1 and 2 under Rule 8.3.1).
2. A Credit Rating Agency is required, under GEN Rule 7.5.1(2), to have an Authorised Individual as its Compliance Officer. It is the responsibility of the Compliance Officer to ensure proper observance by the Credit Rating Agency and its Employees, particularly Rating Analysts, of the applicable legal and other obligations, including any code of conduct/ethics adopted by the Credit Rating Agency. Such a code should generally set out matters relating to unacceptable and unethical behaviour which should be avoided by its Employees. See also Guidance 2 under section 8.1.1.

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## **8.5 Conflicts of interest and independence**

### **Guidance**

1. There is a significant overlap between conflicts of interest and lack of independence of Employees (who include Rating Analysts). Therefore, some of the requirements set out in this section, while promoting independence of Credit Rating Agencies, are equally relevant for the purpose of addressing conflicts of interest. For convenience, they are set out under distinct headings.
2. The more detailed requirements set out in this section are designed to enable a Credit Rating Agency to meet the requirements set out under GEN Rule 4.2.7 (Principle 7 - Conflicts of interest) and COB Rule 8.2.2 (Principle 2 – Independence and transparency). For this purpose, a Credit Rating Agency should have a detailed code of conduct/ethics that sets out its policies and procedures for meeting the requirements including those in this module covering aspects relating to conflicts of interest, as well as independence, of its Employees. See also Guidance 2 under section 8.1.1.

### **Policies and procedures**

#### **8.5.1** A Credit Rating Agency must have adequate, clear and well documented policies, procedures and controls to:

- (a) promote high standards of care, independence and objectivity in decision making by its Employees;
- (b) ensure that its Credit Ratings are not influenced by any considerations other than those which are relevant in accordance with its published methodologies and models as applicable to the particular Rating Subject; and
- (c) identify, and eliminate or manage, as appropriate, including through disclosure, any conflicts of interest that may influence its Credit Ratings, including those conflicts of interest which may influence its Employees who are involved in producing or reviewing Credit Ratings.

### **Guidance**

1. A Credit Rating Agency should neither take, nor forbear or refrain from taking, any Rating Action based on its potential effect (economic, political or otherwise) on the Credit Rating Agency, its Rating Subjects, investors or any other market participants (for example, the existence or non-existence of business relationship between the Credit Rating Agency or a member of its Group and the Rating Subject).
2. The determination of a Credit Rating should be influenced only by factors relevant to the credit assessment in accordance with its published methodologies and models as applicable to the particular Rating Subject.
3. A Credit Rating Agency should, at a minimum, set out clearly when conflicts of interest arise and, in relation to what type of business or commercial dealings or transactions, and between whom, such conflicts of interest can arise.
4. Where the Rating Subject (such as a government) has, or is simultaneously pursuing, any oversight function relating to the Credit Rating Agency, the Credit Rating Agency

should avoid assigning Employees involved in the Credit Rating of the Rating Subject for also discharging any function relating to the Credit Rating Agency's oversight.

### **Provision of consultancy and ancillary services**

- 8.5.2** (1) A Credit Rating Agency must not provide to a Rating Subject or a Related Party of a Rating Subject consultancy or advisory services relating to the corporate or legal structure, assets, liabilities or activities of such Rating Subject or Related Party.
- (2) For the purposes of (1), a Related Party of a Rating Subject is:
- (a) an undertaking which is in the same Group as the Rating Subject;
  - (b) any Person who interacts with the Credit Rating Agency in respect of the Credit Rating; or
  - (c) any Person who has a significant business or other relationship with the Rating Subject or any Person referred to in (a) or (b).
- (3) Without prejudice to (1), a Credit Rating Agency may provide services which are ancillary to its Credit Rating Activities to a Rating Subject or a Related Party of the Rating Subject where it:
- (a) has a clear definition of what services it considers as ancillary services;
  - (b) documents why such services are considered not to raise any conflicts of interest with its Credit Rating Activities; and
  - (c) has in place adequate mechanisms to minimise the potential for any conflicts of interest arising.
- (4) If a member of the Group in which the Credit Rating Agency is also a member provides services of the kind referred to in (1) to a Rating Subject of the Credit Rating Agency or a Related Party of such a Rating Subject, such services must be operationally and functionally separated from the business of the Credit Rating Agency.

### **Guidance**

1. The prohibition in Rule 8.5.2(1) includes, for example, making proposals or recommendations regarding the design or structure of Rating Subjects, including suggestions as to how a desired rating could be achieved. Therefore, such services cannot be provided.
2. Some of the activities which are prohibited under Rule 8.5.2(1) may constitute a Financial Service other than Operating a Credit Rating Agency. Even if a Credit Rating Agency has an authorisation to provide such a Financial Service, it is prevented from providing such services to a Rating Subject or a Related Party because of the prohibition in Rule 8.5.2(1).
3. Ancillary services referred to in Rule 8.5.2(3) include, for example, market forecasts, estimates of economic trends, pricing analysis and other general data analysis as well as

related distribution services. These services can be provided to Rating Subjects and their Related Parties where the requirements in Rule 8.5.2(3) are met. These services are also unlikely to constitute other Financial Services.

4. A Credit Rating Agency should separate operationally its Credit Rating Activities from any ancillary services it provides in accordance with Rule 8.5.2(3). For example, Rating Analysts and other key individuals involved in Credit Rating Activities should not also be involved in the provision of such services.
5. Where a Group member provides to a Rating Subject of a Credit Rating Agency any ancillary services, the Credit Rating Agency and the Group member should not share Employees or premises to ensure operational separation.

### **Credit Rating Agency fees**

**8.5.3** A Credit Rating Agency must not enter into fee arrangements for providing Credit Ratings which:

- (a) vary depending on the rating outcome; or
- (b) constitute any other form of contingency fee.

#### **Guidance**

A Credit Rating Agency's fees should be commensurate with the service provided. Any fee arrangement that allows variation of fees, costs or charges based on a particular rating outcome will constitute a contingency fee arrangement and fall within the prohibition in Rule 8.5.3.

### **Other conflicts of interest**

**8.5.4** A Credit Rating Agency must not engage in any securities or derivatives transactions with, relating to, or in respect of, a Rating Subject or its Related Party.

## **8.6 Independence of Rating Analysts and other Employees**

### **Policies and procedures**

**8.6.1** A Credit Rating Agency must have adequate policies, procedures and controls to ensure that its Employees, as far as practicable, avoid relationships which compromise or are reasonably likely to compromise the independence and objectivity of its Credit Rating Activities.

**8.6.2** (1) A Credit Rating Agency must ensure that its Employees who are directly involved in preparing or reviewing a Credit Rating of a Rating Subject do not initiate, or participate in, discussions regarding fees or payments with the Rating Subject or a Related Party of the Rating Subject.

- (2) A Credit Rating Agency must ensure that its Employees who are directly involved in preparing or reviewing a Credit Rating of a Rating Subject, and their Close Relatives, do not engage in any securities or derivative transactions with, relating to, or in respect of, the Rating Subject or a Related Party of the Rating Subject.

**Guidance**

This Rule should be read in conjunction with Rule 8.2.2, pursuant to which, Employees of a Credit Rating Agency need to be independent and free from conflicts of interest. Such conflicts of interest include the appearance of being compromised as result of a personal relationship which he or his Close Relatives have with a Rating Subject or a Related Party of a Rating Subject. The Credit Rating Agency's policies and procedures should clearly set out where a personal relationship should be considered to create the potential for any real or apparent conflicts of interest and therefore be subject to the conflicts of interest provisions.

- 8.6.3** (1) A Credit Rating Agency must ensure that its Employees who have a relevant material interest in a Rating Subject or its Related Party are not involved in the preparation or review of the relevant Credit Rating or able to influence that process.
- (2) For the purposes of Rule 8.6.3(1), an Employee of a Credit Rating Agency has a material interest in a Rating Subject if the Employee:
- (a) owns a security or a derivative relating to a Rating Subject or its Related Party, other than holdings in diversified collective investment funds;
  - (b) has had a recent employment or other significant business relationship with a Rating Subject or its Related Party which may cause, or may be perceived as causing, conflicts of interest; or
  - (c) has a Close Relative who is currently employed by a Rating Subject or its Related Party.

**Guidance**

A Credit Rating Agency should, where it has a code of conduct/ethics, set out unacceptable conduct for Employees, such as soliciting money, gifts, or favours from anyone with whom the Credit Rating Agency does business, or accepting gifts offered in the form of cash or any gifts which are reasonably capable of influencing their opinions or decisions relating to Credit Ratings. There should also be guidance relating to minimal value of gifts or benefits that may be accepted, and clearance and disclosure procedures relating to such gifts and benefits. See also Guidance 2 under Rule 8.1.1.

- 8.6.4** A Credit Rating Agency must establish policies and procedures for reviewing the past work of a Rating Analyst who leaves the employment of the firm to join a Rating Subject or its Related Party where the Rating Analyst had been involved in producing or reviewing the Credit Rating assigned to such Rating Subject or Related Party.

**Remuneration and reporting lines**

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**Guidance**

A Credit Rating Agency is required, pursuant to GEN Rule 5.3.31, to have remuneration structures and strategies which, amongst other things, are consistent with the business objectives and identified risk parameters within which the firm operates, and provide for effective alignment of risk outcomes and the roles and functions of the relevant Employees. The requirements set out in this section are designed to augment those remuneration requirements set out in GEN.

**8.6.5** A Credit Rating Agency must ensure that Employees involved in the provision of Credit Ratings have reporting lines and remuneration arrangements that are designed to eliminate, or effectively manage, actual and potential conflicts of interest.

**8.6.6** A Credit Rating Agency must ensure that its Employees are not remunerated, or their performance evaluated, based on the amount of revenue generated or expected from the Credit Ratings in which the Employee was involved.

**Guidance**

The Employees intended to be covered by this Rule are Rating Analysts and other Employees who are directly involved in producing or reviewing a Credit Rating, or who are able to influence the credit rating process (such as the senior management).

**8.6.7** A Credit Rating Agency must conduct formal and periodic reviews of its remuneration policies and practices relating to Employees who participate in, or who might otherwise have an effect on, the rating process to ensure that those policies and practices do not compromise the objectivity of the Credit Rating Activities.

**8.7 Transparency and disclosure****Policies and procedures**

**8.7.1** (1) A Credit Rating Agency must, subject to (2), have adequate policies, procedures and controls to ensure that it discloses in a timely manner:

- (a) its Credit Ratings and any updates thereof;
- (b) its policies for distributing Credit Ratings and updates thereof;
- (c) the methodologies and models used and key assumptions made in preparing its Credit Ratings and any updates thereof; and
- (d) any other significant element relating to (a), (b) or (c) above.

(2) A Credit Rating Agency is not required to disclose information where the information is subject to confidentiality requirements.

**Guidance**

1. The level of detail required in the disclosure of information concerning methodologies, models and key assumptions should be such as to give adequate information to the users

of Credit Ratings to enable them to perform their own due diligence when assessing whether, or to what extent, reliance can be placed on those Credit Ratings (see Rule 8.8.1). Disclosure of information must not, however, reveal confidential information of, or relating to, the Rating Subject or its Group pursuant to Rule 8.9.1.

2. The information referred to in Guidance No. 1 should generally include the meaning of each rating category and the definition of default or recovery, and the time horizon the Credit Rating Agency used when making a Credit Rating.
3. A Credit Rating Agency should adequately and clearly disclose applicable risks which may affect a Credit Rating, including a sensitivity analysis of the relevant assumptions and an explanation of how various market developments affect the parameters built into the methodologies and models and may influence or impinge on the Credit Rating (for example volatility).
4. If the nature of a Credit Rating or other circumstances make a historical default rate inappropriate or otherwise likely to mislead investors, the Credit Rating Agency should provide appropriate clarifications.
5. A Credit Rating Agency should provide information to assist users of its Credit Ratings to develop a greater understanding of what a Credit Rating is, and the limitations on the use of Credit Ratings with respect to the particular type of financial product that the Credit Rating Agency rates. A Credit Rating Agency should clearly indicate the attributes and limitations of each Credit Rating, and the limits to which the firm verifies information provided to it by the Rating Subject, its Related Party or any external source.

### **Communication of information**

- 8.7.2** A Credit Rating Agency must ensure that its communications relating to its Credit Ratings, Credit Rating Activities and its other business are clear, fair and not misleading.
- 8.7.3** A Credit Rating Agency must not, in any form of communication, attempt to limit or avoid any duty or liability it may have under any applicable legislation.

### **Guidance**

1. A Credit Rating Agency should, taking into account the nature, scale and complexity of its operations, have a function within its organisation charged with the responsibility for communicating with market participants and the public on questions, concerns or complaints it receives.
2. The objective of this function should be to help ensure that the Credit Rating Agency's officers and management are informed of those issues that such officers and management would reasonably need to be informed about when setting and implementing the Credit Rating Agency's systems and controls.

## **8.8 Disclosure and presentation of Credit Ratings**

### **General Disclosure**

- 8.8.1** (1) Subject to the confidentiality requirements applicable to a Credit Rating Agency, it must ensure that its Credit Ratings:
- (a) are published promptly, and as far as practicable, on a non-selective basis and free of charge;
  - (b) contain sufficient information to enable users of such Credit Ratings to understand how the Credit Rating was reached, including information relating to the methodologies, models and key underlying assumptions used;
  - (c) contain a clear statement if the Credit Rating is initiated by the Credit Rating Agency on its own initiative (unsolicited), and information relating to the Credit Rating Agency's policy relating to providing unsolicited Credit Ratings;
  - (d) contain sufficient information about the historical default rates of its Credit Ratings which are of the same category as the Credit Rating being published so that interested parties can understand the historical performance of its Credit Ratings; and
  - (e) include any other information relevant to the particular Credit Rating, as specified in this module.
- (2) A Credit Rating Agency must ensure that any press release which accompanies a Credit Rating contains key elements underlying the Credit Rating.
- (3) Before publishing a new or an updated Credit Rating or withdrawing a Credit Rating, the Credit Rating Agency must, to the extent practicable and appropriate, give to the Rating Subject sufficient advance notice to enable that Person to draw to the attention of the Credit Rating Agency any factual errors on which the Credit Rating Agency may have based the relevant Credit Rating.
- (4) Subject to the confidentiality requirements applicable to a Credit Rating Agency, any information which the Credit Rating Agency is required to publish pursuant to any Rules must also be made available on the website of the relevant Credit Rating Agency.

### **Guidance**

In relation to Rule 8.8.1(3), a Credit Rating Agency should inform the Rating Subject at least 24 hours before publication of a new Credit Rating or an update or withdrawal of an existing Credit Rating of the principal grounds on which such Credit Rating is based in order to give the Rating Subject an opportunity to draw to the attention of the Credit Rating Agency any factual errors. The Rating Subject has the meaning given to it in GEN Rule 2.27.1(3) and should be read in conjunction with Rule 8.1.1(2).



**Specific Disclosure - Fees and Charges**

- 8.8.2** A Credit Rating Agency must include in its Credit Ratings and its annual report the general nature of its arrangements relating to fees and charges with, or relating to, the Rating Subject including:
- (a) whether the Credit Rating Agency or any member of its Group receives any fees, charges or other monetary benefits which are unrelated to the provision by the Credit Rating Agency of its Credit Ratings, and if so, the proportion of such benefits relating to the aggregate fees and charges in respect of the provision of Credit Ratings; and
  - (b) if the Credit Rating Agency receives 10% or more of its aggregate annual revenue from a single Rating Subject or its Related Party, information about that source.

**Specific Disclosure – Structured financial products**

- 8.8.3** A Credit Rating Agency must, where the Rating Subject is a structured financial product:
- (a) use reasonable efforts to encourage the Rating Subject to disclose to the public all Relevant Information to enable investors and users of the Credit Ratings to conduct their own due diligence relating to that product; and
  - (b) in addition to the disclosure requirements pursuant to Rule 8.8.1 and 8.8.2, disclose in its Credit Ratings whether the Relevant Information is made publicly available by the Rating Subject, or whether all, or some of, such information remains non-public.

**Guidance**

1. The information which a Credit Rating Agency provides relating to structured financial products should include sufficient information such as information relating to the profit and loss statement and cash flow analysis to enable users of the Credit Ratings to understand the basis of the Credit Rating. Such information should also include the degree to which, in accordance with its analysis, the Credit Rating is sensitive to changes in market conditions.
2. A Credit Rating Agency should differentiate ratings of structured finance products from traditional corporate bond ratings, preferably through a different rating symbology. A Credit Rating Agency must also disclose how this differentiation operates.

## **8.9 Confidential information**

**8.9.1** A Credit Rating Agency must have policies, procedures and controls to ensure that it and its Employees do not:

- (a) use any information given to or obtained by the Credit Rating Agency on a confidential basis (“Confidential Information”) for a purpose other than that for which it was given or obtained;
- (b) disclose the Confidential Information to any other Person, except:
  - (i) in accordance with (a);
  - (ii) with the prior written consent of the Person to whom a duty of confidentiality in respect of such Confidential Information is owed; or
  - (iii) where obliged to do so by any legislation applicable to the Credit Rating Agency; and
- (c) disclose any pending Rating Action except to the Rating Subject or as agreed with the Rating Subject.

**8.9.2** Subject to Rule 8.9.1(b), a Credit Rating Agency and its Employees must not disclose Confidential Information in any manner, including in press releases, through research conferences, to future employers, or in conversations with investors, other issuers, other persons, or by other means.

**8.9.3** A Credit Rating Agency must have adequate measures to ensure that it and its Employees:

- (a) take all reasonable steps to protect all property and records belonging to or in possession of the Credit Rating Agency against fraud, theft or misuse; and
- (b) do not share Confidential Information entrusted to the Credit Rating Agency with any third parties except where permitted under Rule 8.9.1(b).

## **8.10 Record keeping**

**8.10.1 (1)** A Credit Rating Agency must, for a minimum of six years, maintain sufficient records in relation to each activity and function of the Credit Rating Agency and, where appropriate, audit trails of its Credit Rating Activities. These must include, where applicable, the following:

- (a) for each Credit Rating:

- (i) the identity of the Rating Analysts participating in the determination of the Credit Rating;
  - (ii) the identity of the individuals who have approved the Credit Rating;
  - (iii) information as to whether the Credit Rating was solicited or unsolicited;
  - (iv) information to support the Credit Rating;
  - (v) the accounting records relating to fees and charges received from or in respect of the Rating Subject;
  - (vi) the internal records and files, including non-public information and working papers, used to form the basis of any Credit Rating; and
  - (vii) credit analysis and credit assessment reports including any internal records and non-public information and working papers used to form the basis of the opinions expressed in such reports;
- (b) the accounting records relating to fees received from any person in relation to services provided by the Credit Rating Agency;
  - (c) the accounting records for each subscriber to the Credit Rating Agency's services;
  - (d) the records documenting the established procedures, methodologies, models and assumptions used by the Credit Rating Agency to determine Credit Ratings; and
  - (e) copies of internal and external communications, including electronic communications, received and sent by the Credit Rating Agency and its Employees that relate to Credit Rating Activities.
- (2) For the purposes of (1), the six year period commences from the date the Credit Rating is disclosed to the public or distributed by subscription.

**Guidance**

1. Information to support a Credit Rating includes information received from the Rating Subject or information obtained through publicly available sources or third parties and verification procedures adopted in relation to information such as those obtained from public sources or third parties. In accordance with GEN Rule 5.3.24, records should be kept in such a manner as to be readily accessible.
2. Where a Credit Rating is subject to on-going surveillance and review, the Credit Rating Agency should retain records required under Rule 8.10.1 in relation to the initial Credit Rating as well as subsequent updates where such records are required to support the latest Credit Rating.