May 13, 2011

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To: FINMA

Via e-mail to: ratingagencies@finma.ch

Re: DBRS' response to FINMA Circular 2008/26 on Credit Rating Agencies – Draft Modification ("FINMA's Draft Modification")

DBRS[1] appreciates the opportunity to provide its comments on FINMA's Draft Modification.

DBRS understands that the proposed modifications to Circular 2008/26 on Credit Rating Agencies (CRAs) are intended to extend the requirements for CRAs to all entities supervised by FINMA and to create more standardized conditions for CRA recognition taking into account international developments. Changes that have been incorporated into this circular among others include the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (IOSCO Code)[2] and relevant areas from the Basel Committee on Banking Supervision "Basel III", December 2010.

The current circular "Recognition of rating agencies for the assessment of capital adequacy requirement" was originally put in force in January 2007 by the Swiss Federal Banking Commission (SFBC), one of FINMA's predecessor authorities. The circular defined recognition requirements for CRAs whose ratings are used by banks and securities dealers to calculate required equity capital. Based on this circular, DBRS was recognized as an external credit rating agency[3] by SFBC in March 2007. When FINMA was set up in early 2009, it incorporated this circular, renaming it FINMA-Circ. O8/26, and assumed existing CRAs including DBRS' ECAI recognitions.

The Draft Modification proposes to extend application to ratings used by insurance companies and collective investment schemes. FINMA has determined to continue to use the system already established for CRA recognition. This means that CRAs recognized by FINMA will not be subject to its supervision under Article 3 of the Financial Market Supervisory Act. However, for CRAs domiciled outside Switzerland[4], FINMA will consider monitoring by foreign supervisory authorities.

[1] DBRS operates its rating business through DBRS Limited, DBRS, Inc. and DBRS Ratings Limited.
[2] The IOSCO Code was updated in May 2008.
[3] External Credit Assessment Institution (ECAI).
[4] There are currently no CRAs with a head office based in Switzerland.

DBRS comments

V. Recognition of rating agencies

B. Requirements

The Draft Modification states that recognition of rating agencies is based on the IOSCO Code which must be publicly available, observed at all times and any deviations must be disclosed with the reasons for them. FINMA has also added other requirements which are set out under six areas: Objectivity, Independence, Access and transparency, Disclosure, Resources and Credibility.

DBRS notes that in some cases, the additional proposed requirements differ substantially from the IOSCO Code and other international regulatory rules. These differences include proposed section 27 under Objectivity, section 32 under Independence and section 46 regarding Resources.

As a global CRA whose ratings are used internationally, DBRS believes that regulation should be internationally harmonized to the extent possible based on a common set of principles that promote a high degree of transparency and disclosure, analytical independence, and integrity and objectivity in the ratings process. Departures from well-established standards or global precedent such as the IOSCO Code or the EU CRA Regulation could create a destabilizing impact on the consistency of ratings and the capital markets, and imposes increased compliance burden and cost for all CRAs with little additional benefit.

The IOSCO Code is a common set of global measures that without modification is one aspect of international regulatory frameworks. DBRS complies with the IOSCO Code, as reflected in its publicly available Business Code of Conduct. In addition to the Business Code, DBRS also has established policies and practices to meet specific jurisdictional requirements including the U.S.[5] and Europe[6]. Canada will be implementing a new regulatory regime in 2011.

a) Objectivity

Under requirements for objectivity, before qualifying for recognition, FINMA requires *"the rating method for every individual market segment, including rigorous back testing, must have been in use and been proven effective for at least three years. In justified exceptional cases, FINMA may reduce the period of proven application of the rating method to not less than one year. "*

This requirement differs substantively from IOSCO Code provision 1.2 wherein "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." It also differs, for example, from the EU CRA Regulation. Article 8.3 states that validation should include back-testing but does not mandate a specific period nor approach.

[5] U.S. Securities and Exchange Commission rules for Nationally Recognized Statistical Rating Organizations (NRSRO).

[6] EU Credit Rating Regulation 1060/2009 (EU CRA Regulation).

A requirement for a specific period of back-testing would impact the rating of new products and development of new methodologies. It would also preclude CRAs who might have a relatively small historical ratings universe who would otherwise issue high quality ratings. This proposed requirement could have a negative impact on the markets and on CRA competition. DBRS suggests that this particular requirement for objectivity does not need to depart from the IOSCO Code language.

b) Independence

FINMA requires that the CRA *" may not be associated with public-sector entities, companies or issuers of products in the structured finance market segment for which it produces ratings (ratings of issuer or issues) or with institutions subject to supervision by FINMA which use its ratings. An inadmissible association is deemed to exist not only if a participating interest exists, but also if significant influence can be exercised over the rating agency or individual ratings or there is the appearance of such influence "*

DBRS agrees that analytical independence in sectors that a CRA rates must be maintained at all times. However, the above requirement singles out public sector entities and the structured finance (SF) market. DBRS would suggest that such specificity is unnecessary. CRAs currently follow a broader precedent for conflicts of interest. It is also unclear what is meant by the term "may not be associated". DBRS would suggest that the IOSCO Code provisions regarding Analyst and Employee Independence[7] are sufficiently robust noting that international rules are similar in this area.

FINMA requires that "*The rating agency must ensure through organisational means that there is an adequate functional separation between operational rating activities and advisory activities."* FINMA's proposed requirement differs in a couple of ways from global standards. The term "advisory services" is not discussed in the IOSCO Code[8]. It focuses on the conflicts of interest posed by consulting services by requiring CRAs to separate, operationally and legally, their credit rating activities from this business. And the EU CRA Regulation[9] prohibits the provision of consultancy or advisory services to rated entities or related third parties. The IOSCO Code and the EU CRA Regulation do discuss ancillary services, and permit a CRA to provide ancillary services as long as they do not present conflicts of interest. DBRS would suggest that FINMA adopt the IOSCO provision language given the basis of FINMA's recognition is the IOSCO Code.

c) Access and transparency

FINMA requires the CRA to disclose *"whether or not the issuer was involved in the rating process."*

[7] Refer to IOSCO Code section 1. C. CRA Analyst and Employee Independence, Provisions 2.11- 2.17 as well as Provision 1.14-1 regarding the prohibition on analysts making proposals or recommendations regarding the design of SF products that a CRA rates.

[8] Refer to IOSCO Code section 2. CRA Independence and Avoidance of Conflicts of Interest, Provision 2.5.

[9] Refer to EU CRA Regulation, Annex 1, Section B, Operational Requirements, Point 4.

DBRS considers ratings where there is no issuer participation to be unsolicited ratings and identifies these ratings as such in its ratings press releases. DBRS will only assign unsolicited ratings when sufficient public information is available to support the analysis and monitor the rating on an ongoing basis. Unsolicited ratings are subject to DBRS' established ratings policies, procedures and methodologies and are covered by its conflicts of interest and unfair, coercive or abusive business practices policies and procedures.

e) Resources

FINMA proposes that "*The rating agency must have sufficient resources (finances, personnel, infrastructure, etc.) to enable it to carry out ratings of a high quality. Where ratings are used in agreements, the resources should have close contact with the executive bodies of the borrower being rated/issuer of the credit instruments being rated"*

The second sentence in this proposed provision is somewhat unclear. DBRS suggests that FINMA clarify it. As scripted, DBRS would suggest that requiring close contact with issuers runs contrary to the objectivity requirements for analytical independence from issuers that a CRA rates. It is unclear as to the purpose of this aspect of the requirement.

C. Recognition Procedure

The Draft Modification indicates that in evaluating the application, FINMA takes into account whether the CRA is recognized by foreign supervisory authorities. CRAs domiciled abroad may apply for a simplified recognition process or waive proof of compliance if they are subject to adequate local supervision in the following jurisdictions: Australia, EU countries, Japan and U.S.

DBRS suggests that FINMA add Canada to this list. As previously indicated, Canada has proposed a regulatory framework[10] planned for implementation in 2011.

VI. Compliance with recognition requirements

The Draft Modification states *"For rating agencies that are subject to foreign supervision, FINMA may take the findings of the foreign supervisory authorities or the measures they impose on the rating agencies into consideration when evaluating a rating agency's fulfillment of the requirements for recognition.*

If shortcomings are found in a rating agency's fulfillment of the requirements for recognition, FINMA may impose measures appropriate to resolving the shortcoming or may temporarily or permanently revoke recognition. If FINMA revokes a rating agency's recognition, the ratings of that agency can no longer be used for supervisory purposes by institutions subject to supervision. The rating agency bears the costs of the procedures that resulted in the revocation of its recognition in accordance with the FINMA-GebV."

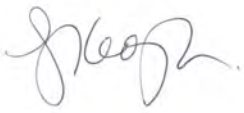
[10] National Instrument 25-101 Designated Rating Organizations, Related Policies and Consequential Amendments

DBRS appreciates FINMA's pragmatic approach to recognition. DBRS would not disagree that FINMA should take into account the findings of foreign supervisory authorities or the measures they impose into consideration when evaluating a CRA's fulfillment of the recognition requirements.

However, DBRS suggests that FINMA also needs to consider the CRA's management response and action plan to resolving the findings of foreign regulators before it determines what, if any, additional measures it might impose. It should also be noted that other regulators typically take a stepped approach to breaches of compliance with requirements that are proportional to the infraction including withdrawal of the rating. Temporarily or permanently revoking the recognition of a CRA would have a significant market impact and unplanned regulatory capital consequences for institutions, especially if the CRA is the only rater.

DBRS would be pleased to further discuss any of the matters raised herein and/or provide additional information. Please do not hesitate to contact me.

Very truly yours,



Mary Keogh
Managing Director
Global Regulatory Affairs
416.597.3614

May 13th, 2011

Swiss Financial Markets Authority
Einsteinstrasse 2
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Via Email: ratingagencies@finma.ch

Reference: Public Comment on Amendments Circular 2008/26 Rating Agencies

Dear Sir,

First of all, we would like to thank you for launching this public consultancy and the opportunity to comment. Kindly find attached the response of our association.

As mentioned in your explanatory report, the global legislative framework for CRAs has substantially changed over the last couple of years. Unfortunately, despite global common goals, the legislative approaches taken differ from regions to region. The legislative process in Europe in the field of CRAs is not yet completed, as the EU Commission already announced a further initiative in this sector for this year.

Currently, the EU legislation on CRAs as amended shares the same objectives as your institution in terms of ensuring Objectivity , independence, transparency and disclosure aspects. In terms of users of ratings, you envisage to extend the scope to Insurers and Collective Investment Scheme as has been done with the EU legislation.

As mentioned in your consultancy, you envisage a simplified recognition for CRA subject to an adequate foreign supervisory system. We welcome if you could publish the countries which may be applicable in this context.

Alternatively, you may follow the approach in the European Union for registration of Third country CRAs: The EU legislation includes a system for assessing the equivalence of the Third Countries legislative frameworks with the EU legislation. As for now, CESR concluded and the European Commission confirmed only the equivalence of the Japanese regulatory systems. Based on this certification, Japan Credit Rating was recognized as CRA in Europe. Similar assessments are still on-going for other countries. We assume that the high requirements of the EU Regulation provides enough comfort to your institution and therefore propose that all registered CRAs in the EU may be certified by your institution.

Last but not least, we positively note the timetable of the consultancy given that the amended Circular is due to enter into force only on January 1st, 2012. This timeframe will allow for an excellent planning and a smooth transition into the new system.

Sincerely yours

Thomas Missong	Thomas Morgenstern
EACRA President	EACRA Secretary General

About EACRA

The European Association of Credit Rating Agencies ("EACRA"), registered in Paris under the laws of France, has been formally established. The Members of the Association currently originate from 7 European countries and include the following companies:

- Assekurata Assekuranz Rating-Agentur is the first independent German rating agency that has specialized on the quality evaluation of insurance companies
- Axesor: Specialized on Spanish SME unsolicited ratings/scorings.
- Cerved Group: Italian Credit Rating Agency recognized ECAI by Bank of Italy
- Credit Rating: covers corporate, financial institutions and municipalities in Ukraine
- CRIF: global company that, in addition to the traditional services of information and scoring, started last year a professional activity aimed to issue unsolicited ratings to Italian companies
- JCR Eurasia: is Japan Credit Rating affiliated company in Turkey and covers all market segments.
- PSR RATING, based in Germany, focuses on solicited corporate ratings and the development of valid rating systems

The Members of the Association have very different business models while assigning ratings. All are deeply rooted in their respective markets, enjoy a high market share and a good reputation with local investors. In addition EACRA is in close contact with nearly all rating agencies in Europe.

FitchRatings

3 May 2011

BY EMAIL
Bernhard Jehle
Swiss Financial Market supervisory authority FINMA
Einsteinstrasse 2
CH-3003 Bern
ratingagencies@finma.ch

Re: Public Consultation on Draft FINMA Circular 2008/26 on Rating Agencies (the "Consultation")

Dear Mr Jehle:

We are writing in response to the request for comment with respect to the Consultation.

We have only one comment – with respect to Section B, Paragraph (e), "Resources". Although we wholeheartedly endorse the requirement in this paragraph that credit rating agencies should have sufficient resources to carry out high quality ratings, we believe that the final sentence of this paragraph should be deleted. This sentence seems to imply that, for purposes of all credit ratings, the rated entity/issuer must provide "close contact with the executive bodies". However, it will not always be the case that the rated entity/issuer will participate in the rating process. This is recognised by IOSCO in its Code of Conduct for credit rating agencies (see Section 3.9). The approach taken by IOSCO is that the credit rating agency should disclose whether the rated entity/issuer has participated in the process; it does not require participation. I have attached a copy of Fitch's *Rating Initiation and Participation Disclosure Policy* (published on our website at http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=568728) to explain how Fitch addresses the disclosure of participation consistent with the IOSCO Code of Conduct.

We thank you for providing us with the opportunity to participate in this consultation process. Please do not hesitate to contact me on +44 20 3530 1368, or susan.launi@fitchratings.com, should you have any questions or wish to discuss any of the foregoing.

Sincerely yours

Susan Launi
Senior European Counsel
Fitch Ratings

FitchRatings

Bulletin #: 14

Rating Initiation and Participation Disclosure Policy

Effective Date: 16 August 2010

Version: 2

Responsibility: Business & Relationship Management, Legal and Credit Policy Groups

Fitch Ratings believes that investors benefit from increased rating coverage by Fitch, whether such ratings are initiated by, or on behalf of, issuers; initiated by, or on behalf of, issuers but subsequently maintained by Fitch; or initiated by Fitch. The criteria and committee procedures are no different for ratings initiated by Fitch and for issuer-initiated ratings. Therefore, the ratings assigned to issuers or transactions with similar credit characteristics are comparable – solicitation status has no effect on the level of the ratings assigned.
In all cases, such ratings may include situations where the issuer chooses not to participate in the rating process. For any rating that Fitch assigns or maintains, irrespective of the participation status, Fitch believes that it has sufficient information to rate the issuer or transaction.

Disclosure of Fitch-Initiated Ratings

Fitch-initiated rating status shall be disclosed in the initial Rating Action Commentary in which Fitch first assigns ratings to an issuer or a transaction using the language below for all rating groups:

"The ratings above have been initiated by Fitch as a service to investors."

Fitch shall not provide any further disclosure relating to initiation status in subsequent Rating Action Commentaries or published research, as Fitch believes that the initiation status is not relevant to any analytical considerations or rating decisions. However, Fitch shall ensure that a highly visible link to the original Rating Action Commentary is maintained on its public website to provide a quick, accessible method for investors to identify whether the rating was initiated by Fitch. Fitch's Ratings Desks shall also provide this information on individual issuers or transactions on request.
Ratings initiated by Fitch should not be interpreted as implying non-participation by the issuer, as participation in the rating process by issuers with Fitch-initiated ratings is common. Ratings that are initiated or maintained by Fitch on a non-participative basis shall carry an additional disclosure, as detailed below, to document their non-participation status.
Fitch defines initiation status in terms of whether the agency initially received a request for a rating from, or on behalf of, an issuer. Thus, initiation status can differ from compensation status, since the status of compensation may change over time for a variety of reasons. In the event that an issuer chooses to stop compensating Fitch for its ratings, Fitch may opt to continue rating the issuer, with or without participation, as a service to investors. Fitch shall not disclose any changes in compensation status but shall note all cases of non-participation in the rating process, as detailed below.
Irrespective of the level of direct participation, where Fitch has initiated rating coverage on an issuer without a request by, or on behalf of, that issuer, Fitch will not engage in fee negotiations with the issuer or its agents for a period of 12 months after the initiated rating is first published.

Disclosure of Non-Participative Ratings

Fitch believes that disclosure of an issuer's participation status may be of interest to investors. As a result, Fitch shall disclose the status of non-participating issuers in all Rating Action Commentaries and issuer specific research as follows:

"The issuer did not participate in the rating process, or provide additional information, beyond the issuer's available public disclosure."

Fitch's Ratings Desks shall also provide this information on individual issuers or transactions on request.

Definition of Participation — Corporate Finance and Public Finance

Participation is defined by Fitch to involve either of the following in the current analytical cycle and in any case within the 12 months preceding the date of the most recent rating action or research update:

- Provision of internal forecasts, risk management data or other non-public disclosure considered as part of the rating process.
- Substantive discussion of the primary topics driving the ratings of the issuer or rated entity with the management of the issuer or rated entity.

Definition of Participation — Structured Finance

Participation is defined by Fitch to involve discussion with the originators, issuers, placement agents or other parties to the structured finance debt issuance regarding the underlying collateral or the origination processes used to originate or monitor that collateral.

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+44 20 7772 8615 tel
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13 May 2011

Bernhard Jehle
Swiss Financial Market Supervisory Authority
FINMA
Einsteinstrasse 2
CH-3003 Bern

Per E-mail: ratingagencies@finma.ch

Dear Mr Jehle

DRAFT FINMA CIRCULAR 2008/26 OF RATING AGENCIES ("THE DRAFT CIRCULAR")

Moody's Investors Service ("MIS") would like to thank FINMA for an opportunity to comment on the Draft Circular. On reviewing the Draft Circular and the accompanying explanatory memorandum, we note that the Draft Circular seeks to expand the recognition of credit rating agencies ("CRAs") to other regulatory frameworks under the authority of FINMA. As a general point, you are reminded that MIS continues to advocate the reduction in the use of credit ratings in regulation where such a model allows for a mechanistic reliance on any measure of credit risk. MIS would further note the following:

1. Recognition of credit rating agencies domiciled outside of Switzerland

We welcome the approach adopted by FINMA in considering a simplified recognition process in recognising CRAs domiciled abroad and subject to an appropriate supervisory regime. We note that that FINMA has determined that Australia, the EU, Japan and the U.S. ("the Specified Jurisdictions") meet the supervisory sufficiency test. As you may be aware, MIS operates on a global basis and operates from currently 19 jurisdictions worldwide. We would therefore propose that FINMA include a provision under the recognition of rating agencies domiciled abroad whereby recognition would be granted to a CRA and its CRA affiliates adopting similar standards of conduct. This will ensure that there is no ambiguity on the part of users of credit ratings in Switzerland as to whether a rating outside of the Specified Jurisdictions is eligible for regulatory use in Switzerland.

2. Requirement of objectivity

FINMA proposes back testing of rating methods and proposes a one to three year minimum term for rating methodologies in each sector. It is unclear what is meant by "rating methods" but by way of clarification, it is our understanding that updates to existing rating methodologies and new rating methodologies employed by previously recognised CRAs would not be restricted by this requirement.

3. Independence

Moody's attaches great significance to its independence and agrees that any significant influence by rated entities over the rating agency or individual ratings would not be acceptable. We nevertheless assume that FINMA's definition, in paragraph 32, of "inadmissible association" is not meant to prevent shareholders from seeking a rating from the CRA.

4. Disclosure

In the third bullet under the heading "(d) Disclosure" (paragraph 43), it is unclear what is meant by the "significance of each rating class" and we would propose that additional clarity be provided to this term.

5. Resources

The term "agreements" in paragraph 46 appears to apply to agreements entered into by third parties, without the involvement or knowledge of the CRA. It is therefore not possible for the CRA to be in compliance with the second sentence of this paragraph. In any event, the first sentence under "Resources" in our view appropriately captures the principles that CRAs should be sufficiently resourced to assign credit ratings of a high quality and would propose the deletion of the second sentence *in toto*:

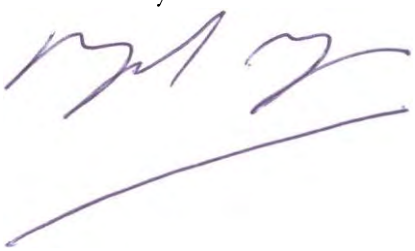
"~~Where ratings are used in agreements, the resources should have close contact with the executive bodies of the borrower being rated/issuer of the credit being rated~~."

6. Recognition

Finally, it is unclear from the Draft Circular whether CRAs already recognised by FINMA would be required to apply for re-registration. We would not expect this to be the case, however, clarification from FINMA on this point would be welcomed.

Please do not hesitate to contact me with any queries you may have on this submission.

Yours sincerely



Nigel Phipps
Head of Regulatory Affairs for Europe, Middle East and Africa ("EMEA")

SwissBanking

Eidgenössische Finanzmarktaufsicht
Prüfgesellschaften und Ratingagenturen
Herr Bernhard Jehle
Einsteinstrasse 2
3003 Bern

ratingagencies@finma.ch

Basel, 6. Mai 2011
J.4.6, MST / SLO

Anhörung FINMA-Rundschreiben 2008/26 „Ratingagenturen“

Sehr geehrter Herr Jehle

Wir nehmen Bezug auf die Anhörung zur Änderung des FINMA-Rundschreibens 2008/26 „Ratingagenturen“ (Unterlagen vom 25. März 2011) und danken Ihnen für die Gelegenheit zur Stellungnahme.

Insgesamt unterstützt die Schweizerische Bankiervereinigung die vorgeschlagenen Änderungen im Rundschreiben „Ratingagenturen“. Insbesondere begrüssen wir die Orientierung an den Standards des IOSCO Code of Conduct “Fundamentals for Credit Rating Agencies“ und die damit angestrebte internationale Kompatibilität.

Auch befürworten wir die vorgesehene Verbreiterung des Geltungsbereichs des Rundschreibens (Abschnitt II) bzw. der aufsichtsrechtlichen Verwendung von Ratings (Abschnitt IV).

Gleichermassen befürworten wir die Neuerungen im Bereich der Anerkennung von im Ausland domizilierten Ratingagenturen. Die Möglichkeit eines vereinfachten Anerkennungsverfahrens im Falle von entsprechender Regulierung und Überwachung im Domizilstaat erscheint uns als angemessene und pragmatische Lösung.

Sowohl inhaltliche Stossrichtungen und Struktur als auch Formulierung und Detaillierungsgrad des revidierten Rundschreibens sind aus unserer Sicht richtig. Wir sind überzeugt, dass die aufgeführten Anforderungen an Ratingagenturen einen wesentlichen Beitrag zur Qualität der Ratings und zu deren Eignung für aufsichtsrechtliche Zwecke leisten werden.

Bei Rückfragen stehen wir Ihnen selbstverständlich gerne zur Verfügung.

Freundliche Grüsse
Schweizerische Bankiervereinigung


Claude-Alain Margelisch Markus Staub

SWISS FUNDS ASSOCIATION SFA
Association for Funds & Asset Management

nur auf elektronischem Wege versandt

Eidgenössische
Finanzmarktaufsicht FINMA
Märkte
z.Hd. der Herren
K. Bucher und B. Jehle
Einsteinstrasse 2
3003 Bern

Basel, 13. Mai 2011
FINMA Korrespondenz 2011 HTS

Anhörung zur Änderung des FINMA-Rundschreibens 2008/26 „Ratingagenturen“ / Stellungnahme der SFA

Sehr geehrter Herr Bucher
sehr geehrter Herr Jehle

Mit Schreiben vom 30. März 2011 laden Sie uns ein, zum Vorschlag für eine Änderung des Rundschreibens 2008/26 „Ratingagenturen“ sowie zum entsprechenden Erläuterungsbericht Stellung zu nehmen.

Ziel des Rundschreibens ist es, zu einem Mindestmass an Qualität von Ratings beizutragen, sofern diese von Beaufsichtigten der FINMA für aufsichtsrechtliche Zwecke verwendet werden. Und da dies auch für kollektive Kapitalanlagen bezüglich Einhaltung der Bestimmungen über die Anlagetechniken und Einsatz von Derivaten nach KKV-FINMA gilt, kommen wir Ihrer Einladung zur Stellungnahme gerne nach.

Im Allgemeinen

Wir begrüssen es, dass sich die FINMA nicht gewissen Entwicklungen im Ausland, wo in einzelnen Ländern eine ständige Aufsicht über Ratingagenturen implementiert wird, anschliesst, sondern am System der Anerkennung von Ratingagenturen festhält, das keine ständige Aufsicht über Ratingagenturen beinhaltet. Die Schaffung eines standardisierten Verfahrens für die Anerkennung von Ratingagenturen mit den vorgesehenen Anforderungen ist ein wichtiger Beitrag für ein Mindestmass an die Qualität von Ratings und trägt zur Transparenz bei.

Begrüssenswert erscheint uns auch, dass mit der geplanten Änderung des Rundschreibens dessen Anwendungsbereich um die kollektiven Kapitalanlagen ergänzt wird. Insbesondere mit Blick auf die für kollektive Kapitalanlagen bestehenden Mindestanforderungen zur Bestellung von Sicherheiten im Rahmen der Effektenleihe erscheint uns eine klare Regelung betreffend der von der FINMA anerkannten Ratingagenturen als sinnvoll.

Im Besonderen

Unter Rz 16 des Rundschreibenentwurfs wird der Bezug zur KKV-FINMA hergestellt. Mit dem dortigen Verweis auf die „Einhaltung der Bestimmungen über Anlagetechniken und Derivate nach der Kollektivanlagenverordnung-FINMA“ wird auf den gesamten 1. Titel (Anlagetechniken und Derivate) der KKV-FINMA Bezug genommen. Diese Bezugnahme erscheint uns sachgerecht, da damit der weitestmögliche Rahmen der in diesem Zusammenhang anwendbaren Verordnung abgedeckt wird. Allenfalls könnte aber mit einem „insbesondere“ der Bezug zur Effektenleihe, den Pensionsgeschäften und den derivativen Finanzinstrumenten hervorgehoben werden.

Sodann erscheint es durchaus angebracht, dass im Rundschreibenentwurf selbst – wie auch im Erläuterungsbericht – an mehreren Stellen hervorgehoben wird, dass Beaufsichtigte, welche Ratings verwenden, eigene Beurteilungen von Kreditrisiken durchführen müssen und eine reflektierte wie auch kritische Grundhaltung gegenüber Ratings pflegen sollen. Dies insbesondere auch aus der Überlegung heraus, dass die von der FINMA anerkannten Ratingagenturen keiner ständigen Aufsicht unterliegen.

———

Für die Aufmerksamkeit, die Sie unseren Überlegungen entgegenbringen, danken wir Ihnen im voraus bestens. Selbstverständlich stehen wir Ihnen für ergänzende Auskünfte jederzeit zur Verfügung.

Freundliche Grüsse

SWISS FUNDS ASSOCIATION SFA

Dr. Matthäus Den Otter
Geschäftsführer

Hans Tschäni
stv. Geschäftsführer

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Research

Zürcher Kantonalbank

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ratingagencies@finma.ch

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Kontakt Sven Bucher
Telefon 044 292 35 35
E-Mail sven.bucher@zkb.ch

Zürich, 12. Mai 2011

Rundschreiben „Ratingagenturen"

Sehr geehrter Herr Jehle

Gerne kommen wir Ihrer Einladung zur Anhörung bezüglich des FINMA-Rundschreibens „Ratingagenturen" vom 25. März 2011 nach und nehmen hiermit zu ausgewählten Punkten Stellung.

Von einem volkswirtschaftlichen Standpunkt aus betrachtet, leisten Ratingagenturen einen Beitrag dazu, das Problem der asymmetrischen Information zwischen Investoren und Emittenten zu verringern. Auf diese Weise verbessern sie die Transparenz und die Vergleichbarkeit von Emissionen. Bei einer Änderung des Rundschreibens „Ratingagenturen" sollten Sie unseres Erachtens in Erwägung ziehen, dass die geplanten Anpassungen aus mehreren Gründen negative Folgen für kleinere und mittlere Schweizer Unternehmen haben könnten.

Derzeit können sich Emittenten neben dem unabhängigen und kostenlosen Rating der Researchabteilungen mehrerer Banken auf die Dienstleistungen der den Finanzplatz Schweiz dominierenden ausländischen Ratingagenturen Fitch Ratings, Moody's Investors Service und Standard & Poor's Ratings Services abstützen. Die geplanten Änderungen dürften die Nachfrage nach Ratings der genannten ausländischen Agenturen erhöhen, während das Angebot durch die benötigte FINMA-Anerkennung gleichzeitig verknappt wird. Dies erhöht die Markteintrittsbarrieren für von der FINMA nicht anerkannte Ratingagenturen und verschärft die bereits bestehende oligopolistische Marktstruktur.

Für grosse Emittenten stellt diese Änderung tendenziell kein signifikantes Problem dar, zumal sie z.B. aufgrund der internationalen Investorenbasis bereits auf Ratings der etablierten Agenturen

angewiesen sind bzw. durch Anzahl und Volumen der Emissionen kaum höhere Finanzierungskosten zu tragen hätten. Schweizer Mid Caps werden jedoch mit erhöhten Refinanzierungskosten, einem Wegfall weiterer Investorensegmente und einem komplizierteren Emissionsprozess rechnen müssen, sofern sie bisher noch nicht im Dialog mit einer Ratingagentur standen. Üblicherweise werden die Ratingagenturen mit einer jährlichen Gebühr und einer variablen Gebühr vergütet. Falls ein Emittent in unregelmässigen Abständen mit geringem Volumen am Kapitalmarkt aktiv ist, haben diese Gebühren zum Teil signifikante Auswirkungen auf die Finanzierungskosten.

Um die Verengung des Marktes und die damit verbundene Verteuerung der Refinanzierungskosten zu vermeiden, wäre es unseres Erachtens sinnvoller, bei kleineren und mittelgrossen Unternehmungen eine Flexibilisierung der zu verwendenden Ratings anzustreben. Ein solcher Vorschlag könnte in die Richtung des von der Schweizer Börse SIX Swiss Exchange verwendeten Ansatzes (Art. 3.3 des Reglements SBI®-Indexfamilie) gehen. Bei einer noch zu definierenden Unternehmensgrösse könnten subsidiär auch die Ratings von Schweizer Banken verwendet werden. Dabei könnte unseres Erachtens auch die Vorschrift erlassen werden, dass beispielsweise ein Rating von mindestens zwei Banken vorliegen muss.

Zusammenfassend lässt sich konstatieren, dass die geplanten Änderungen unter Umständen dazu führen, dass sich Schweizer Nebenwerte aufgrund von erheblichen Mehrkosten aus dem Kapitalmarkt zurückziehen müssten. Explizit weisen wir darauf hin, dass dieser Unternehmensentscheid nicht das Resultat von Bonitätsverschlechterungen oder Investoren-bedenken wäre, sondern aufgrund der regulatorischen Rahmenbedingungen und der damit einhergehenden Mehrkosten durch die Mandatierung einer Ratingagentur entstehen würde. Diese Zweitrundeneffekte sind nicht im Sinne des Finanzplatzes Schweiz.

Für Auskünfte oder Rückfragen steht Ihnen Sven Bucher unter Tel. 044 292 35 35 gerne zur Verfügung.

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(Versand erfolgt elektronisch)