



Bundesverband
Investment und
Asset Management e.V.

28 June 2005
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Per E-Mail

Mr. Jonathan G. Katz
Secretary

Securities and Exchange Commission
450 Fifth Street N.W.
Washington, DC 20549-0609
USA

**Definition of Nationally Recognized Statistical Rating Organization
(File No. S/-04-05)**

Dear Mr. Katz,

In response to your call for comment, please find below BVI, the German association of investment fund and asset managers comments on the subject at hand. Our 77 member companies manage in excess of EUR 1200 billion in both retail and institutional investment funds as well as mandates. We hope you will find our comments helpful.

1. Need for regulation of not rating related activities

We believe that NRSRO's are entities whose primary business is the issuance of credit ratings for the purposes of evaluating the credit risk of issuers of debt and debt-like securities.

However, we believe the definition needs to be expanded in order to include any parent, sister and subsidiary undertakings to the extent that such entities may benefit from the market power of the CRA in order to influence the behaviour of other market participants for the commercial benefit of the CRA or its owners. In particular, our members believe that provision of advisory/ancillary services by credit rating agencies outside the assignment and maintenance of ratings and the distribution of data directly related to ratings poses special risks, and as a result regulation of this area should be considered going forward.

We are referring in particular to the since two years ongoing attempts of Standard & Poors to press European investors into signing licence agreements on the international securities identification numbers (CUSIP/ISINs) which the S&P CUSIP Service Bureau (a department within the CRA) issues on US securities. In particular, the use of the rating agency name S&P in letters and local rating agency office personnel to push market participants into signing licence agreements for not ratings related data services has put our member firms under perceived

Hauptgeschäftsführer:
Stefan Seip
Geschäftsführer:
Rüdiger H. Päsler
Rudolf Siebel

Eschenheimer Anlage 28
D-60318 Frankfurt am Main
Postfach 10 04 37
D-60004 Frankfurt am Main
Phone: +49 69 15 40 90 0
Fax: +49 69 5 97 14 06
info@bvi.de
www.bvi.de

pressures by a rating agency. Our members fear that non compliance with the S&P request for licence agreements would lead to negative consequences for the parent or the asset managers credit rating. The situation is not limited to Germany but occurs in other (European) markets too as evidenced by the complaints raised with the International Standards Organisation ISO (which is the legal owner of ISIN) by the European Fund and Asset Management Association EFAMA (formerly FEFSI), several of its member associations as well as data user groups such as NPUG (UK) or SIPUG (Switzerland).

This kind of behaviour threatens the integrity of the rating agency. Such conduct of business which is not related at all to the ratings business should be strongly discouraged by regulators. There needs to be a legal, brand, organizational and personnel separation of non rating related ancillary services from rating and directly related ancillary services offered by the NRSRO, in particular delivery of rating related data in order to avoid the use of the “rating agency cloud” by related entities which are delivering other services. This should be considered as requirement in the rating agency registration process with national regulators, e.g. in the context of registration as NRSRO.

2. No need for regulation of rating activities

BVI wishes to avoid any overregulation of the functioning credit rating agency market. Credit ratings should be objective, independent and accepted opinions about the relative credit worthiness of issuers or single issues. Only such rating agencies should be acceptable for regulatory purposes which can demonstrate market acceptance with investors and issuers. BVI does not see the need for a day to day government supervision of the rating agencies. We welcome the idea of a voluntary common code of conduct based on the IOSCO principles all credit rating agencies should subscribe to. We continue to believe that the adherence of registered rating agencies to the requirements of such code of conduct can be primarily maintained by market mechanisms with the exception of the not rating related activities described above, where regulation may be unavoidable. Individual misbehaviour of rating agency personnel in the market place can be effectively dealt with the existing regulation on insider dealing and market abuse.

Government supervision beyond the registration of the CRA is likely not to result in any measurable improvement in the quality of the ratings. However, regulation and supervision will result in increased cost to be borne by issuers, asset managers, and ultimately the investors which will pay the cost of supervision through increased rating or rating data feed fees.

The barriers to entry into the credit rating market are historically first and foremost a function of the introduction and restrictive application of the NRSRO status in the US which over time has lead to a very limited number of acceptable rating agencies (and even this limited number has been

more reduced by market exists). These effects cannot be overcome quickly and easily, however, we welcome that the SEC is according now the NRSRO status to new rating agencies. The SEC should accord NRSRO status to more (foreign) rating agencies, at least for the markets and industry segments they are active in. Overall the acceptance of NRSROs which fulfil the definition should be quasi automatic. In particular the proposed market acceptance test should not be too onerous. Market acceptance could be sufficiently demonstrated by a letter of support of an institutional investor group or investment management trade organisation. The administrative process should be clearly defined in all steps and include time limits in order to insure speed and ease of applications.

Sincerely yours

BVI Bundesverband Investment und Asset Management e.V.

(signed)
Rudolf Siebel
Managing Director

(signed)
Frank Schoendorf
Vice President