

# **Exposure Draft:** Code of Standard Practices for Participants in the Credit Rating Process

Association of Corporate Treasurers (United Kingdom)

Association for Financial Professionals (United States)

Association Française des Trésoriers d'Entreprise (France)



*Association for  
Financial Professionals*



ASSOCIATION FRANÇAISE  
DES TRÉSORIERES D'ENTREPRISE

*With the Support of the International Group of Treasury Associations and  
Euro Associations of Corporate Treasurers:*



This Exposure Draft: Code of Standard Practices for Participants in the Credit Rating Process has been drafted by The Association of Corporate Treasurers (ACT), London, England, The Association for Financial Professionals (AFP), United States, Association Française Des Trésoriers D'Entreprise (AFTE), Paris, France.

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## **Executive Summary**

### **Background**

Credit rating agencies (CRAs) play an important role in the efficient operation of the global capital markets. Investors and lenders rely on CRAs to provide a clear measure of the creditworthiness of debt issuers and borrowers, while debt issuers rely on CRAs to issue ratings that accurately reflect the company's relative creditworthiness. Companies also use credit ratings to evaluate trading partners, financial counterparties, and potential business partners; and in many jurisdictions, regulators also rely on CRAs for determining regulatory capital requirements and permitted investments. Yet for the credit rating process to work properly, a critical nexus of transparency and trust must be exhibited by all of these parties – the issuers, the credit rating agencies, and the regulators who oversee both.

During the past two years, however, CRAs, and the credit rating process itself, have been the subject of significant criticism. CRAs have come under fire for failing to warn investors of the dangers and ultimately disastrous collapse of large global companies, including, for example, Parmalat, Enron, and WorldCom. These events have led some to question whether the CRAs are meeting the needs of market participants.

Some have asserted that regulators should take a larger role in regulating the CRAs and should encourage competition in the market for credit ratings. Yet both credit rating agencies and government regulators have been slow to respond to the call for reform. For example, while the U.S. Securities and Exchange Commission (SEC) issued its first concept release a decade ago and a new concept release in June 2003 on rating agencies and the use of credit ratings under U.S. Federal securities laws, it has yet to take any definitive action. Similarly, regulators in Europe have yet to address the issue as well.

As a result of the continuing concerns over the credit rating process, a series of initiatives arose independently. In response to the SEC's June 2003 concept release, the Association for Financial Professionals (AFP) in the U.S. and the Association of Corporate Treasurers (ACT) in the United Kingdom called for improved regulation, improved internal controls and an industry code of practice for all those involved in the credit rating process. At the same time the Association Francaise Des Tresoriers D'Entreprise (AFTE) developed and shared a best practices guide that it had used in conversations with the CRAs and relevant authorities. Recognizing the various efforts and in light of the global need to restore confidence to the credit rating process, it was agreed in September 2003 in Slovakia at the meeting of the International Group of Treasury Associations that AFP, ACT and AFTE would bring forward a single global proposal for improving rating industry practice.

## **The Exposure Draft**

AFP, ACT and AFTE are jointly releasing this Exposure Draft of a Code of Standard Practices for Participants in the Credit Rating Process. This Exposure Draft is issued to solicit comment from the widest number of those involved with credit ratings, including issuers, users, CRAs, regulators, and others with a professional interest in credit ratings. The Associations, along with the International Group of Treasury Associations (IGTA) and Euro Associations of Corporate Treasurers (EACT), believe that this Code of Standard Practices, coupled with a minimum regulatory framework, is the most efficient and flexible solution to restoring confidence in credit rating agencies and the information they provide to global capital markets.

These Associations are the leading corporate finance organizations in their respective countries, representing nearly 19,000 treasury and finance professionals from many of the largest companies in the world. Treasury and finance professionals rely on the CRAs when their companies issue debt and when they make investment decisions. Their relationship with the CRAs provides them with a unique view on both the strengths and weaknesses of the agencies' practices.

The Code includes three sections: regulatory recommendations, rating agency code of standard practices, and issuer code of standard practices.

For CRAs, the Code includes recommendations to improve the transparency of the rating process, protect non-public information that is provided to CRAs, protect against conflicts of interest, address the issue of unsolicited ratings, and improve communication with issuers and other market participants.

Regulatory recommendations focus on the credibility and reliability of ratings, transparency in the rating agency recognition process and improving ongoing regulatory oversight of approved rating agencies. Regulatory recommendations also include removing barriers to competition in the credit rating agency marketplace.

Finally, recognizing that the credibility and reliability of credit ratings is heavily dependent on issuers providing accurate and adequate information to the CRAs, the Issuer Code of Standard Practices outlines issuer obligations in the credit rating process. These obligations are intended to improve the quality of the information available to the CRAs during the initial rating process and on an ongoing basis, and to ensure that issuers respond appropriately to communications received from CRAs.

This exposure draft is an important, collaborative, and global private-sector response to many of the issues that have been raised about the credit rating process and the agencies themselves. While certain of the points below would

usefully be incorporated into regulation in a jurisdiction where CRAs are regulated, the majority are better incorporated into an industry code of standard practices. In jurisdictions where CRAs are regulated, the Code is intended to serve as a complement to, rather than a substitute for, government regulation.

**Request for Comments**

The Associations welcome comments and suggestions on the concept of a Code of Standard Practices, the Exposure Draft, and the appropriate manner in which to incorporate the final Code into the credit rating process. Comments and suggestions should be directed to any or all of the following:

Jeff A. Glenzer, CTP, Director of Treasury Services, AFP  
Phone: +1 (301) 961-8872  
[jglenzer@afponline.org](mailto:jglenzer@afponline.org)

John Grout, Technical Director, ACT  
Phone: +44 (0)20 7213 0712  
[ratingcode@treasurers.co.uk](mailto:ratingcode@treasurers.co.uk)

Patrice Tourlière, Treasury and Finance Manager, Lafarge  
Phone : + 33 1 44 34 11 64  
[patrice.tourliere@lafarge.com](mailto:patrice.tourliere@lafarge.com)

Comments should be submitted no later than May 31, 2004. Comments and suggestions received may be made available on the Web sites of the Associations unless they are stated to be confidential and not for public display.

## **Introduction**

Credit rating agencies (CRAs) play an important role in the efficient operation of global capital markets. In addition to any credit analysis done internally, investors depend on the CRAs to analyze all public information and any non-public information the agency has gathered about a company to form a meaningful assessment of the creditworthiness of the company. These ratings, which are commonly paid for by the issuers, are used by individuals, professional investment managers, and corporate finance professionals when selecting securities for themselves or their organizations and by financial institutions when determining whether to lend to a prospective borrower and, if so, at what terms. CRAs also play an important role for companies when evaluating counterparties for financial transactions, in evaluating actual or potential suppliers or customers for non-financial goods and services, and in similarly evaluating partners, collaborators, or joint venture prospects.

Debt issuers expect the CRAs to understand the company's finances, strategic plans, competitive environment and any other relevant information about the company in order to issue ratings that:

- allow the company to place securities at terms that are reflective of its relative creditworthiness;
- allow others that deal with the issuer to improve their assessment of the issuer as a potential trading partner; and
- are a valuable part of the issuer's external communications with the market.

In many jurisdictions, ratings are also used to determine regulatory capital requirements and permitted investments.

In November 2002, the Association for Financial Professionals (AFP) released its "Rating Agencies Survey: Accuracy, Timeliness, and Regulation<sup>1</sup>." AFP's survey, which received over 700 responses, found that a significant minority of treasury and finance professionals from companies with rated debt believe that their company's credit ratings are neither accurate nor timely. Respondents believe that their company's ratings are more reflective of the industry in which it operates rather than of the company's financial condition<sup>2</sup>. Those responsible for investing or lending money on their organization's behalf also reported a lack of confidence in the accuracy and timeliness of the ratings of the companies in which they invest or to whom they extend credit.

Efforts to improve investor and issuer confidence in the CRAs have been proceeding on multiple fronts. In the United States, the effort has focused primarily on the way in which the Securities and Exchange Commission (SEC)

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<sup>1</sup> [http://www.afponline.org/pub/pdf/ratings\\_survey.pdf](http://www.afponline.org/pub/pdf/ratings_survey.pdf)

<sup>2</sup> The Associations recognize that credit ratings are developed through a combination of quantitative and qualitative factors, not solely the reported or proforma financial statements of an issuer.

regulates the CRAs that it recognizes as nationally recognized statistical rating organizations (NRSRO). AFP submitted a comment letter in response to an SEC Concept Release, "Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws<sup>3</sup>." In the comment letter<sup>4</sup>, AFP called on the SEC to remove artificial barriers to entry into the credit ratings market. AFP also recommended that the SEC periodically review each CRA it recognizes in order to ensure that they continue to be issuers of credible and reliable ratings and have in place effective internal controls. AFP commented that the SEC should minimize further regulation and allow market forces to determine acceptable standards for many practices.

In the United Kingdom, the Association of Corporate Treasurers (ACT) in its response<sup>5</sup> to the SEC Concept Release espoused the concept of an industry code of practice as a key factor in CRA regulation and conduct of business. Neither the United Kingdom's Financial Services Authority nor the European Union grants a regulatory imprimatur that parallels the NRSRO designation in the United States. However, the regulation of CRAs by the United States Securities and Exchange Commission affects the practices of the CRAs in the United Kingdom and other jurisdictions, and thus concerns issuers and investors in the UK. The ACT believes that a robust code of conduct to which issuers, investors and CRAs can provide input would serve to underpin regulation, to minimize the need for regulation and help to avoid fragmentation arising from differences in national and regional regulatory regimes.

In March 2003, the French Association of Corporate Treasurers (AFTE) developed and shared with the Euro Associations of Corporate Treasurers (EACT)<sup>6</sup> a best practices guide that it has used in conversations with the CRAs and relevant authorities. The AFTE met with each of the three CRAs in Paris to discuss ways in which it might contribute to improving the relations between CRAs, issuers, and the market. In addition to developing best practices for CRAs, the AFTE has also begun a dialogue to identify the responsibilities of issuers to the agencies in recognition of the important role that the issuers play in the process.

While the tactics of each of these associations have been different, the goal of the three is quite similar. Each is seeking to improve the relationship between issuers and the CRAs, improve the quality of the ratings they promulgate, and restore investor confidence in global capital markets.

At its meeting in September 2003 in Slovakia, the International Group of Treasury Associations (which brings together the treasury associations of 26 countries) asked the AFP, ACT and AFTE to bring forward proposals for

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<sup>3</sup> <http://www.sec.gov/rules/concept/33-8236.htm>

<sup>4</sup> <http://www.afponline.org/pub/pdf/clkat072803.pdf>

<sup>5</sup> <http://www.treasurers.org/technical/papers/resources/actcommentssec.pdf>

<sup>6</sup> The EACT brings together the national treasury associations of the Euro currency zone.

improving rating industry practice. This paper puts forth, for the widest discussion, a proposal that reflects the common elements of the stances of the three associations.

We hope that this paper will be a contribution to the development of industry practice. While certain of the points below would usefully be incorporated into regulation in a jurisdiction where CRAs are regulated, the majority are better incorporated into an industry code of standard practices. Such a code of standard practices should, however, incorporate the substance of all the points given that some jurisdictions do not regulate CRAs.

Adherence to the industry code of standard practices could be a recital in rating agency contracts with issuers or a representation to/from issuers, precedent to the contracts.

We note the publication by the International Organization of Securities Commissions (IOSCO) of principles for the regulation of rating agencies<sup>7</sup> and generally support those principles. We believe that regulation should only provide a minimal fail-safe framework for CRA regulation and that the more flexible and adaptable industry code of standard practices must play a complementary role to such regulation.

The Associations look forward to discussing these concepts with CRAs, investors, intermediaries, issuers, regulators and other interested parties.

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<sup>7</sup> <http://www.iosco.org/news/pdf/IOSCONEWS59.pdf>

## **Regulatory Recommendations**

- 1. In jurisdictions where regulators grant recognition or approval to CRAs, the regulators should strive to eliminate unnecessary regulatory burdens and barriers to entry.**
  - 1.1. Regulators should establish and clearly communicate simple, stringent but attainable criteria that CRAs must meet in order to be recognized or approved. These criteria, along with documented processes and procedures, will eliminate unnecessary regulatory barriers to entry into the ratings market and may stimulate new competition.
  - 1.2. The criteria that CRAs must meet to receive regulatory approval should be based on whether the agency can consistently produce credible and reliable ratings over the long-term, not on methodology. The determination of whether ratings are credible and reliable may be based on market acceptance, quantitative analysis, or other methods developed by relevant regulators.
  - 1.3. The criteria for recognition should also require a CRA seeking regulatory approval to document its internal controls designed to protect against conflicts of interest and anti-competitive and abusive practices and to ensure against the inappropriate use of all non-public information to which rating agencies are privy.
  - 1.4. Regulators should periodically review each recognized CRA to ensure that it continues to meet the recognition criteria.
  - 1.5. It is unlikely, at least in the short-run, that a newly-recognized CRA could displace an established CRA or make it practical for an issuer to not receive a rating from one of the established CRAs. However, with additional competition or even the threat of additional competition resulting from the removal of barriers to entry, regulators should allow market forces to determine the appropriate frequency of rating reviews, acceptable methodologies, appropriate staffing levels and qualifications, and other points about which there is no wide agreement.
  - 1.6. Regulators should not prescribe methodologies that CRAs may use, but require that each CRA document and adhere to its chosen, published methodologies, while recognizing that many judgements are involved in arriving at ratings other than purely statistical ratings.
  - 1.7. Because of their access to non-public information about the companies they rate, regulators should require CRAs to document and implement policies and procedures to prevent the disclosure of

non-public information to outside parties that might benefit from this information.

- 1.8. In cases where a CRA is a parent, subsidiary, division, joint venture partner or affiliate of any organization that might benefit from non-public information, regulators should require that the CRA document strong firewalls that prevent the disclosure to or use of non-public information by these related or affiliated businesses or their personnel.
- 1.9. Regulators should prohibit, for a reasonable period of time, analysts and other CRA staff privy to non-public information from working in positions in securities markets or as journalists reporting or commenting on those markets such that they might benefit from this information.
- 1.10. Regulators should not stipulate a frequency (e.g., annually, semi-annually) with which CRAs must update ratings, but require agencies to disclose the date of the last formal review and when they last updated each rating.

## **Rating Agency Code of Standard Practices**

### **2. Credit rating agencies should take steps to enhance the transparency of the rating process.**

- 2.1. Each CRA should widely publicize its methodologies on a periodic basis and prior to any changes in such methodologies.
- 2.2. While recognizing that all credit ratings, apart from purely statistical ratings, involve matters of judgement, a CRA should document and adhere to its published methodologies.
- 2.3. Each CRA should widely publicize any changes in its methodologies and allow a short period for public comment to the agency prior to the release of any rating announcement that might be the consequence of these changes.
- 2.4. Each CRA should publish the definition and historical default rates of each rating symbol it uses.
- 2.5. Each CRA should provide a guide to the methodology applicable to each company it rates prior to the assignment of a rating and preceding the implementation of any changes to the methodology.
- 2.6. CRAs should publish information on the qualifications and experience of the analyst assigned to a company, as well as the sector(s) and other companies this analyst covers. This information should be updated from time to time as necessary.

### **3. Confidential information gathered by CRAs during the development of ratings should be protected and not otherwise be publicly disseminated.**

- 3.1. Because of their access to non-public information about the companies they rate, CRAs should document and implement policies and procedures to prevent the disclosure of non-public information to outside parties that might benefit from this information.
- 3.2. In cases where a CRA is a parent, subsidiary, division, joint venture partner or affiliate of any organization that might benefit from non-public information, the CRA should document strong firewalls that prevent the disclosure to or use of non-public information by these related or affiliated businesses or their personnel.
- 3.3. Analysts and other agency staff privy to non-public information should be required, in so far as is consistent with applicable law on employment and restraint of trade, to sign a pre-employment non-

disclosure agreement that prohibits them from using their access to such information in future employment in securities markets or as journalists reporting or commenting on those markets such that they might benefit from this information.

**4. Credit rating agencies should establish and document policies and procedures to protect against potential conflicts of interest.**

- 4.1. CRAs should have an ownership structure that is not likely to create opportunities for conflicts of interest to arise.
- 4.2. There should be strong firewalls between rating analysts and agency staff responsible for raising revenue from solicited ratings.
- 4.3. There should also be strong firewalls between rating analysts and staff involved in providing rating advisory services.

**5. Credit rating agencies should clearly distinguish between solicited and unsolicited ratings and disclose when a rating was last updated.**

- 5.1. CRAs should disclose whether each rating was solicited or unsolicited, and whether the issuer participated in the rating process. Whether a rating was solicited or unsolicited should be disclosed each time a rating is published.
- 5.2. CRAs should disclose whether a rating is based purely on statistical analysis of published information, statistical analysis of published information confirmed through conversations between a qualified analyst and the issuer, or analysis of published information and non-published information gathered during discussions between the CRA and the issuer.
- 5.3. CRAs should disclose when they last conducted a full review with the issuer and when each rating was last updated. CRAs should conduct a full review with each rated issuer no less than annually.

**6. Rating agencies should improve communication with issuers and the market.**

- 6.1. Prior to public release, issuers should be given an opportunity to review the text of any rating action affecting their securities to ensure the accuracy of reported information and to remove any non-public information erroneously included in the text.
- 6.2. The CRA should disclose to the issuer the key assumptions and fundamental analysis underlying the rating action, as well as any other

information that materially influenced the rating action and that could influence future rating actions.

- 6.3. Any financial figures that are restated by CRAs in public releases should be fully explained to the issuer and reconciled with the public figures reported by the issuer in its financial reports or other published information.
- 6.4. Long-term and short-term rating actions should be independent and treated as such, with all disclosure and communication requirements and rights of appeal applying to each rating.
- 6.5. As the analyst's recommendation can be called into question and overridden by members of the rating committee, issuers should have an opportunity to provide feedback to the rating committee on key assumptions and fundamental analysis, as well as any other information that may have materially influenced the rating action.
- 6.6. CRAs should commit to completing the rating process in a timely manner with consideration given to any stated issuer intentions to issue debt or otherwise access the capital markets. When an issuer communicates to a CRA its intention to access the capital markets without a corresponding request for a new rating, CRAs should avoid any unnecessary rating actions that could hinder the issuer's ability to effectively complete its capital markets operation.
- 6.7. Within five business days of a rating action, an issuer should have an opportunity, at its own cost, to appeal a rating or an outlook to a new group of analysts, who should meet with management and have access to previously-gathered company information. The result of this appeal should be published as soon as possible, but no later than six weeks following the publishing of the appealed rating.
- 6.8. Information provided to the CRA during the rating process and in regular meetings should be recorded by the agency, retained and made available to ratings analysts that may later be assigned to the company. As the principal rating agencies normally seek to rate through an economic cycle, records should be retained for at least that period as the agency understands it and some fundamental, structural information should be retained permanently or until it ceases to be relevant. During each formal review of an issuer, CRAs should confirm whether the information on record is still applicable or requires updating to ensure that the CRA is not rating based on outdated information.

- 6.9. CRAs should be expected to respond to issuer concerns about their rating in a timely and serious manner.

## **Issuer Code of Standard Practices**

### **7. Issuers should commit to cooperate actively with CRAs when a rating is solicited and to providing information to CRAs that will contribute to the initial and ongoing accuracy and timeliness of solicited ratings.**

- 7.1. Credit ratings and opinions are forward-looking and involve matters of judgement by the CRAs, and the credibility and reliability of these ratings and opinions are heavily dependent on an issuer's ability to provide adequate and timely information. Therefore, an issuer is responsible for providing information to CRAs that should include:
  - 7.1.1. The issuer's business strategy;
  - 7.1.2. The legal and management structure of the issuer and its parent company or subsidiaries, as well as its management processes;
  - 7.1.3. The risks and opportunities of the issuer's business environment, as well as those peculiar to itself;
  - 7.1.4. The issuer's approach to risk management and financing;
  - 7.1.5. The issuer's financial policies;
  - 7.1.6. Key financial data; and
  - 7.1.7. Any other information or data that the issuer believes will help the CRAs to better understand its particular circumstances and outlook.
- 7.2. Issuers should provide adequate and timely information, in good faith, regarding any material change in the financial situation of the company.
- 7.3. Notwithstanding the requirement for full and timely communication to CRAs in 7.2, issuers should hold, at least once a year, a full review with CRAs in order to explain past performance and future prospects on a horizon relevant, in the issuer's opinion, with the nature of its business(es). In doing this, issuers should allow CRAs to access the appropriate level of management within their organization.
- 7.4. Issuers should inform CRAs about any corporate actions, including public debt issuances, prior to their launch. Issuers should provide CRAs with all relevant information on these corporate actions in order to allow CRAs to issue their opinion/rating, if any, in a timely manner.

- 7.5. Issuers should endeavor to address CRAs' questions and requests as quickly as possible and, in case of delayed answers, to inform CRAs accordingly.
  
- 7.6. Issuers should seek to react as quickly as practicable to communications submitted to them by a CRA prior to their public release by the CRA. While issuers should, in any case, make reasonable efforts to respond as quickly as possible, the time frame in which companies may review the text should be limited (but not less than four business hours) in order to ensure that investors receive timely information and to minimize the possibility of information leaks.

During this time, issuers should not take any pre-emptive action that would challenge or counter the release by the credit rating agency. In addition, issuers should not take advantage of the delay in the release of the rating action to the market by making any debt issuance other than the refinancing of maturing short-term debt.

### **About the Association of Corporate Treasurers**

The Association of Corporate Treasurers (ACT), based in London, England, is an organization of professionals in corporate finance, risk and treasury and cash management operating internationally. Formed to promote the study and best practice of finance and treasury management, it has over 3,300 members and 1,200 students in more than 40 countries. Its education and examination syllabi are recognized by both practitioners and bankers as the global standard setters for treasury education. The ACT represents the interest of non-financial sector corporations in financial markets to regulators, standards setters, trade bodies, etc.

Contact: John Grout, Technical Director, ACT  
Phone: +44 (0)20 7213 0712  
[jgrout@treasurers.co.uk](mailto:jgrout@treasurers.co.uk)

Comments on the Code of Standard Practices: [ratingcode@treasurers.co.uk](mailto:ratingcode@treasurers.co.uk)  
General Queries: [enquiries@treasurers.co.uk](mailto:enquiries@treasurers.co.uk)  
Web Site: [www.treasurers.org](http://www.treasurers.org)

### **About the Association for Financial Professionals**

The Association for Financial Professionals (AFP) headquartered in Bethesda, Maryland, supports more than 14,000 individual members from a wide range of industries throughout all stages of their careers in various aspects of treasury and financial management. AFP is the preferred resource for financial professionals for continuing education, financial tools and publications, career development, certifications, research, representation to legislators and regulators, and the development of industry standards.

Contact: Jeff A. Glenzer, CTP, Director of Treasury Services, AFP  
Phone: (301) 961-8872  
[jglenzer@afponline.org](mailto:jglenzer@afponline.org)

General Inquiries: [afp@afponline.org](mailto:afp@afponline.org)  
Web Site: [www.afponline.org](http://www.afponline.org)

### **About Association Française des Trésoriers d'Entreprise (AFTE)**

Association Française des Trésoriers d'Entreprise (AFTE), founded in 1976, represents more than 1,400 members, including 1,050 Corporate Treasurers or Financial Managers of approximately 900 industrial and commercial companies; 450 members are based in the provinces. There are also 350 correspondent members. Its development is concentrated on five activities: technical committees, conferences, education, publications and representation of corporate treasurers. AFTE is a founding member of the Euro Associations of Corporate Treasurers (EACT).

Contact: Patrice Tourlière, Treasury and Finance Manager, Lafarge  
Phone : + 33 1 44 34 11 64  
[patrice.tourliere@lafarge.com](mailto:patrice.tourliere@lafarge.com)

Web Site: [www.afte.com](http://www.afte.com)