

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-75747 )**

**August 20, 2015**

**ORDER GRANTING TEMPORARY CONDITIONAL EXEMPTION FOR JAPAN  
CREDIT RATING AGENCY, LTD. FROM CERTAIN REQUIREMENTS OF SECTION  
15E(t) OF THE SECURITIES EXCHANGE ACT OF 1934**

**I. Introduction**

Section 15E(t) of the Securities Exchange Act of 1934 (“Exchange Act”) requires that each nationally recognized statistical rating organization (“NRSRO”) implement certain corporate governance measures.<sup>1</sup> Specifically, Section 15E(t)(1) requires each NRSRO to have a board of directors, and Section 15E(t)(3) sets forth certain duties of such board of directors.<sup>2</sup> Section 15E(t)(2)(A) provides that at least half of the board of directors, but not fewer than two members thereof, shall be independent of the NRSRO, and that a portion of the independent directors shall include users of ratings from an NRSRO.<sup>3</sup> Pursuant to Section 15E(t)(2)(C), the compensation of the independent members of the board of directors of the NRSRO shall not be linked to the business performance of the NRSRO and shall be arranged so as to ensure the independence of their judgment, and their term of office shall be for a pre-agreed fixed period, not to exceed five years, and shall not be renewable.

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<sup>1</sup> 15 U.S.C. § 78o-7(t).

<sup>2</sup> Section 15E(t)(3) provides that in addition to the overall responsibilities of the NRSRO’s board of directors, the board shall oversee: (a) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings; (b) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest; (c) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and (d) the compensation and promotion policies and practices of the NRSRO.

<sup>3</sup> Section 15E(t)(2)(B) provides that in order to be considered independent, a member of the board of directors of an NRSRO: (1) may not, other than in his or her capacity as a member of the board or any committee thereof: (a) accept any consulting, advisory, or other compensatory fee from the NRSRO; or (b) be a person associated with the NRSRO or with any affiliated company thereof; and (2) shall be disqualified from any deliberation involving a specific rating in which the independent board member has a financial interest in the outcome of the rating.

The Commission may grant an exemption from Section 15E(t) under Section 36 of the Exchange Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.<sup>4</sup>

## **II. Exemption Request of Japan Credit Rating Agency, Ltd.**

Japan Credit Rating Agency, Ltd. (“JCR”) is a credit rating agency registered with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (iii) and clause (v) of Section 3(a)(62)(A) of the Exchange Act. JCR has requested an exemption from certain requirements of Section 15E(t) on the basis that Japanese law mandates credit rating agencies that are registered with the Financial Services Agency of Japan (“JFSA”) implement corporate governance measures that are in many respects similar to Section 15E(t) and have similar policy goals, but that also contain certain differences that prevent it from complying with Section 15E(t)(2)(A) and Section 15E(t)(3).

JCR has represented that it is required by Japanese law to adopt certain control systems, including those to ensure competence and fairness in credit ratings process and procedure, and to prevent conflicts of interest. It has also represented that to ensure implementation of these control systems, a credit rating agency must establish a non-board Supervisory Committee, as a discrete unit that is separate from the board of directors and at least one-third (or at least two where there are three or fewer members) of the Supervisory Committee must be independent members. To be considered independent, a member of the Supervisory Committee may not be an “Officer” or “employee” of the credit rating agency, or have been such an Officer or employee in the past five years. JCR has represented that the term “Officer” is defined to include a director, and thus a director of a credit rating agency may not be an independent member of the

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<sup>4</sup> 15 U.S.C. 78mm.

Supervisory Committee. JCR has also represented that duplicating the duties of the Supervisory Committee would, among other things, circumvent Japanese law because Japanese law excludes all directors of a credit rating agency from performing independent oversight of its credit rating activities.

JCR has represented that the Supervisory Committee has a structure and duties similar to those required under Section 15E(t), including that it must include members who are independent of the credit rating agency. In some cases where there are differences between Japanese law and Section 15E(t), JCR represents that it has already taken certain steps in light of Section 15E(t) standards.<sup>5</sup>

### **III. Discussion**

Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.<sup>6</sup>

The Commission finds, for the following reasons, that it is appropriate in the public interest and is consistent with the protection of investors to grant JCR a temporary, conditional exemption allowing JCR to satisfy the requirements of Section 15E(t)(2) and Section 15E(t)(3) through the Supervisory Committee:

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<sup>5</sup> For example, JCR has represented that its Supervisory Committee includes a user of ratings from an NRSRO, as required by Exchange Act Section 15E(t)(2)(A)).

<sup>6</sup> 15 U.S.C. 78mm.

- a) JCR has represented that Japanese law is designed to ensure accuracy in rating through fairness and independence of credit rating activities;
- b) JCR has made representations regarding the requirements of Japanese law and its own internal rules and policies with respect to the duties of the Supervisory Committee;
- c) JCR has represented that it will perform the duties under Section 15E(t)(3) through the Supervisory Committee; and
- d) JCR has represented that it has already taken certain steps in light of Section 15E(t) standards, and subject to the conditions below, the Commission believes that JCR would be able to substantially satisfy the requirements of Section 15E(t) through the Supervisory Committee.

Section 15E(p) of the Exchange Act, as added by Section 932(a)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act,<sup>7</sup> requires Commission staff to conduct an examination of each NRSRO at least annually. Commission staff will review the activities of the Supervisory Committee during the annual examination, and may also review such activities at any other time.

As an integrated part of the applicable annual examination, Commission staff will examine JCR's satisfaction of the conditions to this order set forth in Section IV below. The staff may also conduct an examination of such matters at any other time. If the conditions are not being fulfilled to the staff's satisfaction, the staff will consider whether to make recommendations to the Commission, as appropriate.

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<sup>7</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

#### **IV. Conclusion**

For the foregoing reasons, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant JCR a temporary, conditional exemption allowing JCR to satisfy the requirements of Section 15E(t)(2) and Section 15E(t)(3) of the Exchange Act through the Supervisory Committee.

ACCORDINGLY, pursuant to Section 36 of the Exchange Act,

IT IS HEREBY ORDERED that Japan Credit Rating Agency, Ltd., is exempt from the requirements of Exchange Act Section 15E(t)(2) and Section 15E(t)(3) until August 20, 2018.

This exemption is subject to the following conditions:

- (1) JCR will maintain a Supervisory Committee pursuant to Japanese law;
- (2) JCR will require the Supervisory Committee to fulfill all of the duties mandated by Exchange Act Section 15E(t)(3);
- (3) JCR will promptly notify Commission staff of any changes to the requirements of Japanese law and to its internal Supervisory Committee Rules (the “Committee Rules”) and will provide a copy of the updated Committee Rules to the Commission staff upon request;
- (4) At least one of the independent members of the Supervisory Committee will be a user of ratings;
- (5) At least half of the Supervisory Committee, but no fewer than two members, will be independent of the NRSRO, as defined in Exchange Act Section 15E(t)(2)(B);
- (6) The independent members of the Supervisory Committee will each serve for a total term of no more than five years;

(7) The compensation of the independent members of the Supervisory Committee will not be linked to the business performance of JCR and will be arranged so as to ensure the independence of their judgment;

(8) The deliberations of the Supervisory Committee will be recorded with sufficient specificity to enable examination by Commission staff upon request;

(9) JCR will promptly notify Commission staff of any changes in the facts and circumstances contained in its representations; and

(10) JCR will provide Commission staff with copies of all reports produced by the Supervisory Committee.

By the Commission.

Robert W. Errett  
Secretary