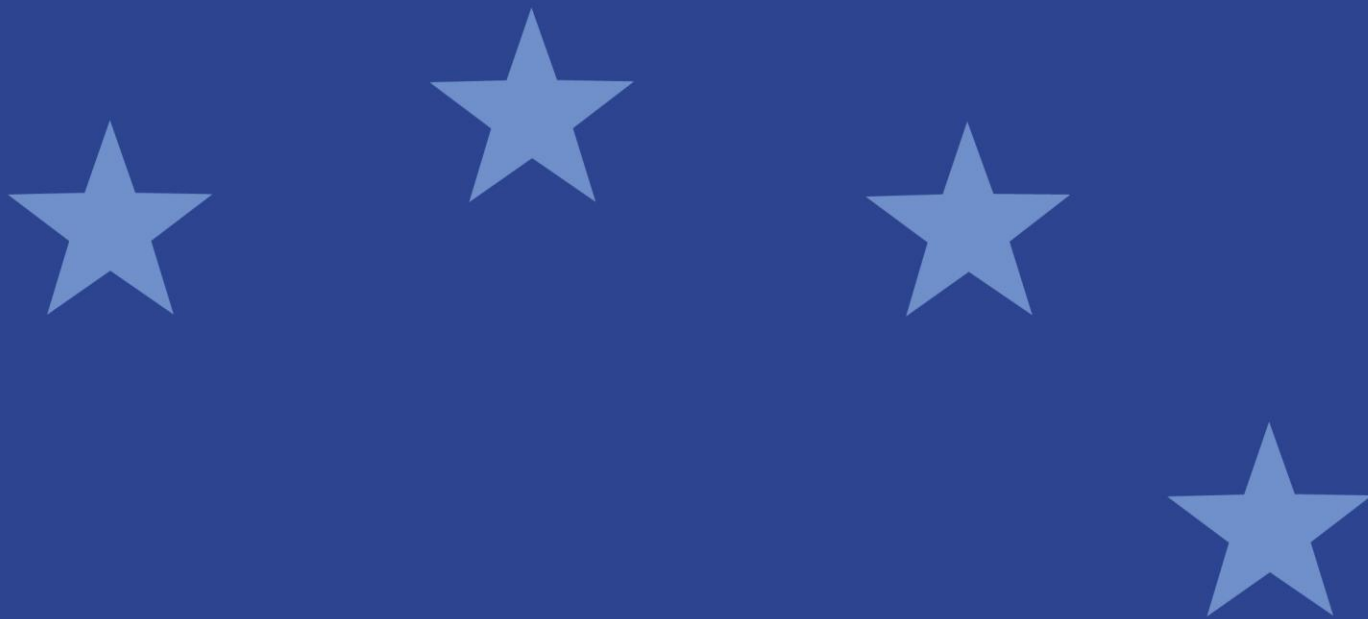




European Securities and  
Markets Authority

# Questions and Answers

**Implementation of the Regulation (EU) No 462/2013 on Credit Rating Agencies**





## 1. Background

1. Regulation (EU) No 462/2013 of the European Parliament and of the Council of 31 May 2013 amending the Regulation (EC) No 1060/2009 entered into force on 20 June 2013. This Regulation complements the current regulatory framework for credit rating agencies.
2. The current legal and regulatory framework on Credit Rating Agencies (CRAs) is made up of the following EU legislation:
  - a. Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (as last amended by Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 and previously amended by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011) hereinafter referred as “CRA Regulation”;
  - b. Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings;
  - c. Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies;
  - d. Commission Delegated Regulation (EU) No 446/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on the content and format of ratings data periodic reporting to be submitted to the European Securities and Markets Authority by credit rating agencies;
  - e. Commission Delegated Regulation (EU) No 447/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies;
  - f. Commission Delegated Regulation (EU) No 448/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies shall make available in a central repository established by the European Securities and Markets Authority;

- g. Commission Delegated Regulation (EU) No 449/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies;
  - h. Commission Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions.
3. In view of ESMA's supervisory role with regard to Credit Rating Agencies, ESMA has adopted this Q&As document which relates to the consistent application of the CRA Regulation. The first version of this document was published on 17 December 2013. This document is expected to be updated and expanded as and when appropriate.

## **2. Purpose**

4. The purpose of this document is to provide clarity on the requirements and practice in the application of the CRA Regulation and in particular, the CRA 3 Regulation (Regulation (EU) No 462/2013 of 21 May 2013). It provides responses to questions posed by market participants, including credit rating agencies, in relation to the practical application of the CRA Regulation.
5. ESMA will welcome feedback from market participants on these or other questions with a view to update, where necessary, the document.

## **3. Status**

6. The Q&As mechanism is a practical tool used to provide transparency on ESMA's supervisory approach and practice under the CRA Regulation.
7. Therefore, due to the nature of Q&As, formal public consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the Technical Committee for Credit Rating Agencies (CRA Technical Committee) or, where specific expertise is needed, with other external parties. In this case, ESMA has engaged in consultation with ESMA's CRA Technical Committee.
8. ESMA will periodically review these questions and answers to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation would be followed.

## **4. Questions and answers**

9. This document is intended to be continually edited and updated as and when new questions are received. In such cases, the date on which each section was last amended is included for ease of reference.
10. Questions on the practical application of any of the CRA requirements, including the requirements in CRA's technical standards, may be sent to the following email address at ESMA: [cras@esma.europa.eu](mailto:cras@esma.europa.eu)



## Acronyms Used

<b>CRA Regulation</b>	Regulation (EC) No 1060/2009 of the European Parliament and of the Council (as last amended by Regulation (EU) No 462/2013)
<b>CRA3 Regulation</b>	Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies.
<b>CRAs</b>	Credit Rating Agencies
<b>ESMA</b>	The European Securities and Markets Authority
<b>MiFID</b>	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on market in financial instruments
<b>MLTFD</b>	Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
<b>PD</b>	“Prospectus Directive” 2010/73/UE of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.
<b>TD</b>	“Transparency Directive” of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.
<b>Q&amp;As</b>	Questions and Answers
<b>RTS</b>	Regulatory Technical Standards

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## Part I: Sovereign ratings<sup>1</sup>

Date last updated: 15 May 2014

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### Question 1 [last update 2 December 2013]

#### Article 8a(3)<sup>2</sup> – Entry into force of the calendar for publication of sovereign ratings.

*When does the obligation to publish sovereign ratings and related rating outlooks on Fridays enter into force?*

#### Answer 1

Article 8a of the CRA Regulation subjects sovereign ratings to specific provisions, in particular:

- i) at the end of December, CRAs shall submit to ESMA and publish on their website a calendar for the following 12 months setting the dates for the publication of sovereign ratings and the dates for the publication of related rating outlooks where applicable; and,
- ii) the publication dates of sovereign ratings and related rating outlooks should be set on a Friday. In the case of unsolicited sovereign ratings, the number of publication dates is limited to a maximum of three dates.

Since the amending CRA 3 Regulation entered into force on 20 June 2013, CRAs should in accordance with the new Article 8a of the CRA Regulation communicate to ESMA and publish on their website the calendar setting the rating actions on sovereign ratings and outlooks for the 12 following months before the end of December 2013. Those rating actions and outlooks will have to take place on a Friday as from the first Friday of January 2014 onwards.

### Question 2 [last update 15 May 2014]

#### Point 3, Part III, Section D of Annex I – Timing of publication of sovereign ratings.

*(a) When do sovereign ratings or related rating outlooks have to be published?*

*(b) How to find out which markets are considered as “regulated markets”?*

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<sup>1</sup> Article 3 (v) defines Sovereign ratings as:

- i. a credit rating where the entity rated is a State or a regional or local authority or a State;
- ii. a credit rating where the issuer of the debt or financial obligation, debt security or other financial instrument is a State or a regional or local authority of a State, or a special purpose vehicle of a State or of a regional or local authority;
- iii. a credit rating where the issuer is an international financial institution established by two or more States which has the purpose of mobilising funding and providing financial assistance for the benefit of the members of that international financial institution which are experiencing or threatened by severe financing problems.

<sup>2</sup> This Q&As document refers to the articles of the CRA Regulation as numbered in the CRA3 Regulation.

## Answer 2

- (a) **\*\*modified\*\*** The CRA Regulation provides that where a CRA issues sovereign ratings or related rating outlooks, they should be published after the close of business hours of the last closed regulated market in the European Union and at least one hour before the opening of the first opened regulated market in the European Union.

In view of the underlying objective of the CRA3 Regulation not to disrupt capital markets with the publication of sovereign ratings and related rating outlooks during trading hours of European Union regulated capital markets, ESMA believes that CRAs should only publish their sovereign ratings and related rating outlooks on a Friday after the close of business hours of the last closed regulated market in the European Union.

- (b) Article 3(z) of the CRA Regulation defines regulated markets as those regulated markets as defined in point (14) of Article 4(1) of Directive 2004/39/EC and established in the Union. A list of regulated markets is published on ESMA's webpage: [http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks\\_id=23&language=0&pageName=REGULATED\\_MARKETS\\_Display&subsection\\_id=0](http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=23&language=0&pageName=REGULATED_MARKETS_Display&subsection_id=0)

## Question 3 [last update 15 May 2014]

### Article 8a(4) – Deviations from the sovereign ratings calendar

- (a) *Does ESMA need to previously authorise a deviation from the announced calendar of sovereign ratings and outlooks?*
- (b) *In which cases would a CRA be able to deviate from the announced calendar of sovereign ratings and outlooks?*
- (c) *Where the reason for a deviation from the announced sovereign ratings and outlooks calendar is that an issuer appealed the CRA's decision, shall the CRA specify that an appeal is the cause of the deviation?*
- (d) *How should CRAs disclose the reasons for a deviation from the announced calendar of sovereign ratings and outlooks?*
- (e) **\*\*new\*\*** *Are CRAs obliged to publish a rating action or a related rating outlook on the date announced in their announced calendar of sovereign ratings and outlooks? In case of non-publication on the announced date, are CRAs obliged to provide an explanation of the reasons for non-publication?*
- (f) **\*\*new\*\*** *In case of a deviation from the announced calendar of sovereign ratings and outlooks, what rules are applied to the publication of sovereign ratings and related rating outlooks?*

## Answer 3

- (a) The CRA Regulation does not request CRAs to seek prior authorisation from ESMA before deviating from the announced calendar of sovereign ratings and outlooks. ESMA will supervise whether deviations are based on the obligation for CRAs to comply with Article 8(2), Article

10(1) and Article 11(1) of the CRA Regulation and in particular, whether a detailed explanation of the reasons for such a deviation accompanies the credit rating or outlook.

- (b) CRAs have to follow the announced calendar of sovereign ratings and outlooks as a general rule. However, CRAs have also to comply with the overarching principle of timely issuing credit rating of adequate quality. In order to combine both principles, the Regulation allows CRAs to deviate from the announced calendar where necessary to comply with the obligation to disclose credit ratings based on all available and relevant information in a timely manner (Article 8(2)<sup>3</sup>, Article 10(1)<sup>4</sup> and Article 11(1)<sup>5</sup>). Deviations from the announced calendar should not happen routinely.
- (c) Following an appeal made by rating committee members or CRA's staff members (internal appeal) or the issuer (external appeal), a delay in the adoption of the sovereign rating or related rating outlook may occur. Therefore, as the CRA Regulation requires CRAs to provide a detailed explanation of the reasons for the deviation from the announced calendar, CRAs should explain in a clear manner that the reason for the deviation was an appeal.
- (d) CRAs should be transparent and disclose the reasons for a deviation from the announced calendar in a clear and non-misleading way. CRAs should also communicate to ESMA deviations from the announced calendar with a detailed explanation of the reason for such a deviation. The rules on the presentation of credit ratings and rating outlooks should be taken into account when making public the reasons for the deviation (Article 10(2) and Part I of Section D of Annex I of the CRA Regulation i.e. in credit reports or press releases). In view of transparency, CRAs should also consider to provide the reasons for the deviation on their website, in particular in the section where the sovereign calendar is available to investors. In that case, CRAs might also consider including a hyperlink in the press release or credit rating report referring investors to that section of the webpage.
- (e) **\*\*new\*\*** The CRA Regulation requires CRAs to publish sovereign ratings and related rating outlooks in accordance with their sovereign ratings and outlooks calendar. This requirement does not imply that CRAs are obliged to publish a sovereign rating or a related rating outlook on each date announced in their calendar. Consequently, this non-publication does not constitute a deviation from the sovereign ratings and outlooks calendar and CRAs do not need to publish an explanation of the reasons for non-publication.

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<sup>3</sup> Article 8(2) of the CRA Regulation requires CRAs to ensure that the credit ratings and the rating outlooks are based on a thorough analysis of all the information that is available to it and that is relevant to its analysis according to the applicable rating methodologies. They shall adopt all necessary measures so that the information they use in assigning credit ratings and rating outlooks is of sufficient quality and from reliable sources.

<sup>4</sup> Article 10(1) of the CRA Regulation requires CRAs to disclose any credit rating or rating outlook, as well as any decision to discontinue a credit rating, on a non-selective basis and in a timely manner. In the event of a decision to discontinue a credit rating, the information disclosed shall include full reasons for the decision.

<sup>5</sup> Article 11(1) of the CRA Regulation requires CRAs to fully disclose to the public and update immediately information relating to any actual and potential conflicts of interest, methodologies and descriptions of models and key rating assumptions, as well as their material changes" (Part I of Section E of Annex I).

- (f) **\*\*new\*\*** When a deviation from the announced date in the sovereign calendar takes place following the reasoning of sub question (b) of question 3, CRAs should publish their sovereign ratings or related rating outlooks on any day after the close of business hours of the last closed regulated market in the European Union and at least one hour before the opening of the first opened regulated market in the European Union. The rules on presentation of credit ratings and rating outlooks (Article 10(2) and Part I of Section D of Annex I of the CRA Regulation) as well as the guidance on how to disclose the reasons when deviating from the announced sovereign calendar (sub question (d) of question 3) should be also taken into account.

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## Part II: Conflict of interest concerning investments in CRAs

Date last updated: 15 May 2014

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### Question 4 [last update 15 May 2014]

#### Article 6a – Investments in credit rating agencies

Article 6a of the CRA Regulation provides specific rules regarding the relations between the CRAs and their shareholders or members. A shareholder or a member of a CRA registered in the EU should not simultaneously hold a participation of 5 % or more in two or more CRAs registered in the EU, unless the credit rating agencies concerned belong to the same group. Article 6a (1) of the CRA Regulation exempts from that rule holdings in diversified collective investment schemes, including managed funds such as pension funds or life insurance.

- (a) *Could a non-EU CRA have a stake higher than 5% in a CRA registered in the EU and vice-versa?*
- (b) *Could an EU registered CRA acquire another EU registered CRA?*
- (c) **\*\*new\*\*** *For the purposes of Article 6a of the CRA Regulation, the term “shareholder” includes beneficial owners as defined in Article 3(6) of Directive 2005/60/EC (Money Laundering and Terrorist Financing Directive). Are collective portfolio managers considered as shareholders for the purpose of Article 6a of the Regulation?*
- (d) **\*\*new\*\*** *Should portfolio managers be considered as shareholders under the last paragraph of Article 6a(1) as subjects in a position to exercise significant influence on the business activities of collective investment schemes?*

#### Answer 4

- (a) Article 6a of the CRA Regulation does not differentiate between EU and non-EU CRAs shareholders or members of a credit rating agency. Consequently, Article 6a of the CRA Regulation applies to any CRA shareholder or member of a credit rating agency registered in the EU holding 5% or more of the capital or the voting rights of another CRA registered in the EU regardless of where the shareholder is located.



As a result, a non EU CRA or a shareholder can hold 5% or more of the capital or the voting rights in a CRA registered in the EU provided that they do not hold 5% or more of the capital or the voting rights in any other CRA registered in the EU. This rule also applies in case of indirect shareholding, where an EU or non-EU person or entity holds 5% or more of the capital or the voting rights of a company which has the power to exercise control or a dominant influence over a credit rating agency registered in the EU.

- (b) Article 6a(2) of the CRA Regulation excludes from the prohibition of holding 5% or more of the capital or the voting right of any other credit rating agency those investments in other credit rating agencies belonging to the same group of credit rating agencies. Consequently, a take-over of an EU registered CRA should be allowed when, as a consequence of the corporate action, the targeted EU-registered CRA will belong to the same group of the acquiring EU registered CRA.
- (c) **\*\*new\*\*** ESMA considers that a collective portfolio manager should be considered a shareholder when according to the applicable national legislation (based on the relevant EU legislation) the portfolio manager is considered as a shareholder.
- (d) **\*\*new\*\*** The last paragraph of Article 6a(1) allows shareholders with 5% or more capital or voting rights in one CRA registered in the EU to have at the same time holdings in collective investment schemes which invest 5% or more in any other CRA. However, an exception to such rule is provided at the end of the last paragraph of Article 6a(1) when a shareholder with 5% or more capital or voting rights in one CRA registered in the EU has also holdings in a collective investment scheme that puts him or her in a position to exercise significant influence on the business activities of such a scheme. The last paragraph of Article 6a(1) does not refer to portfolio managers of such schemes provided that they are not considered shareholders as explained in sub question (c) of question 4.

#### **Question 5** [last update 2 December 2013]

#### **Annex I, Section B – Operational requirements: Identification of relevant shareholders.**

*How are CRAs supposed to identify relevant (more than 5%) shareholders in order to be compliant with the provisions concerning conflicts presented by shareholders established in Sections B(3), B(3a) and B(4) of Annex I of the CRA Regulation?*

#### **Answer 5**

Section B(4) of Annex I of the CRA Regulation applies to shareholders as defined in Article 3(3). In addition, the relevant paragraphs of Section B(3) and B(3a) also apply to indirect shareholders covered by Article 10 of the TD and companies that control or exercise dominant influence, directly or indirectly on the CRA, and which are covered by Article 10 of the TD, provided that the information is known or should be known by the CRA (Section B(3b) of annex I of the Regulation).

Thus, CRAs are required to make all their best efforts to identify their relevant shareholders and frequently monitor the activities, stake, rights, interests and affiliations of its shareholders in rated entities so as to make sure that it does not breach the new regulatory issuance prohibitions and disclosure requirements. The frequency of monitoring should depend on different factors. For instance, the closer the stake of a shareholder is to any regulatory limitation, the more frequently a CRA should engage with this shareholder.

Regarding the identification of indirect shareholders, ESMA is aware that, where information is not public or only disclosed periodically, CRAs may not be able to identify indirect shareholders. CRAs should keep records of the steps undertaken and evidence of their best efforts to identify their shareholders (for instance, written refusal of a shareholder to provide the CRA with information or regulatory provisions in legal texts) and should consider – when allowed by national company law - limiting the corporate rights of shareholders in the most serious cases of non-cooperation.

**Question 6** [last update 2 December 2013]

**Article 2 of CRA3 Regulation – Entry into force of the prohibition of holding 5% or more of the capital or the voting right of any other agency**

*What is the entry into force of Article 6a(1)(a)?*

**Answer 6**

The obligation for CRAs to identify those shareholders holding at least 5% of either the capital or the voting rights entered into force on 20 June 2013.

However, as provided for Article 2 of CRA3 Regulation, Article 6a(1)(a) shall apply from 21 June 2014 as regards any shareholder or member of a CRA which on 15 November 2011 held 5 % or more of the capital of more than one credit rating agency.

Consequently, those shareholders or members of a CRA holding 5% or more of the capital or the voting rights of more than one CRA after 15 November 2011 should immediately proceed to reduce (divest) their holding rights in one of the two CRAs under 5% of the capital or voting rights. Therefore, by 21 June 2014, there should not be any shareholder or member of a EU registered CRA holding 5% or more of the capital or the voting rights of more than one CRA “acquired” on or before 15 November 2011.

This requirement does not apply to investments in other CRAs belonging to the same group of CRAs.

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### **Part III: Methodologies, models and key rating assumptions**

Date last updated: 2 December 2013

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**Question 7** [last update 2 December 2013]

**Article 8(5a) and Article 14(3) – Notification of material changes to methodologies**

*When is a change to methodologies, models or key rating assumptions considered as a “material change”?*

**Answer 7**

CRAs that intend to make a material change to methodologies, models, or key rating assumptions which could have an impact on a credit rating need to disclose the reasons for such changes. Material changes to methodologies, models, or key rating assumptions might include among others:

- i) a change in the key criteria used;
- ii) a change in the key rating assumptions and key variables used in the rating methodology;
- iii) a change in the respective weight of the qualitative and quantitative factors;
- iv) a change in the way driving factors are assessed; or
- v) a change that has a direct or indirect impact on a significant number of credit ratings.

CRAs should explain in a comprehensive manner which of the above mentioned elements has significantly contributed to a change to methodologies, models, or key rating assumptions. The elements which have been changed should also be clearly disclosed.

#### **Question 8** [last update 2 December 2013]

##### **Article 8(7) – Errors in rating methodologies**

- (a) Should errors in the data used in the rating process be notified to ESMA and all affected rated entities?*
- (b) Are CRAs allowed to notify the errors in rating methodologies to the affected entities in the press release or credit report published after the re-rating exercise?*

#### **Answer 8**

- (a) The Regulation refers not only to errors in rating methodologies but also in their application. Consequently, the erroneous data in the application of a methodology should be notified to ESMA and all affected rated entities explaining the impact on the ratings, including the potential need to review issued ratings.
- (b) Where a CRA becomes aware of errors in its rating methodologies or in their application, the CRA Regulation clearly states that CRAs shall immediately notify those errors to ESMA and all affected rated entities. Notifications cannot be postponed to the press release or credit report published after the re-rating exercise. The Regulation does not require that such notifications to rated entities have to be done in a public way.

However, where errors have an impact on a credit rating including the need to review the issued rating, CRAs should explain this in its notification to the rated entity and publish those errors on their website in a transparent and easy accessible way.

If a CRA has to go through the review and re-rating process described in paragraphs a) to c) of Article 8(6) of the CRA Regulation and subsequently go on to issue a new credit rating, the CRA should as a good practice explain in the relevant rating report/press release that such credit rating was reviewed as a consequence of an error and refer to the publication made on its website according to Article 8(7) (b) of the Regulation.

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#### **Part IV: Unsolicited credit ratings**

Date last updated: 2 December 2013

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**Question 9** [last update 2 December 2013]

**Article 3(1)(x) – Definition of unsolicited credit ratings**

*Does the participation of the issuer in the credit rating process define a credit rating as a solicited credit rating?*

**Answer 9**

The Regulation defines unsolicited credit ratings as a credit rating assigned by a credit rating agency other than upon request. In the absence of such a request, the participation of the issuer in the rating process (for example, by providing a CRA with information) does not transform an unsolicited rating into a solicited rating.

Article 10(5) of the CRA Regulation reinforces such an approach requiring CRAs to state prominently in the unsolicited credit rating whether or not the rated entity participated in the credit rating process.

**Question 10** [last update 2 December 2013]

**Article 10(5) – Disclosure and presentation of unsolicited credit ratings**

*How should CRAs disclose and present unsolicited credit ratings according to the new requirements in Article 10(5) of the CRA Regulation?*

**Answer 10**

The CRA Regulation requires CRAs to identify unsolicited credit ratings as such. Moreover, CRAs shall also state prominently in the unsolicited credit rating (using a clearly distinguishable different colour code for the rating category):

- i) whether or not the rated entity or a related third party participated in the credit rating process and
- ii) whether the credit rating agency had access to the accounts, management and other relevant internal documents for the rated entity or a related third party.

The combination of both requirements means that unsolicited credit ratings should firstly be identified with a specific identifier and, secondly, it should be highlighted in case there was participation of the rated entity in the rating process or the CRA had access to relevant internal documents for the rated entity by way of disclosing the rating symbols<sup>6</sup> in a distinguishable colour.

The identification of unsolicited credit ratings as such and the use of a distinguishable colour for rating categories in order to identify the participation of the rated entity should be included in the press release of the rating action and in the CRA' websites. The meaning of the coloured rating categories should also be included in the policies and procedures regarding unsolicited credit ratings that CRAs must disclose according to Article 10(4) of the Regulation.

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<sup>6</sup> Article 3(1)(h) of the CRA Regulation defines “rating category” as a rating symbol, such as a letter or numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the types of rated entities, issuers and financial instruments or other assets.