



European Securities and  
Markets Authority

# Consultation Paper

## Guidelines on Disclosure Requirements for Initial Reviews and Preliminary Ratings





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## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex II. Comments are most helpful if they:

- respond to the question stated.
- indicate the specific question to which the comment relates.
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by 4 August 2021.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

The collection of confidential responses is without prejudice to the scope of Regulation (EC) No 1049/2001. Possible requests for access to documents will be dealt in compliance with the requirements and obligations laid down in Regulation (EC) No 1049/2001.

### Data protection

Information on data protection can be found at <https://www.esma.europa.eu/data-protection> under the heading Data Protection.

### Who should read this paper?

This paper may be of interest to rated entities, issuers of debt instruments, users of credit ratings, credit rating agencies and entities interested in applying to be a registered CRA.

## Legislative references, abbreviations and definitions

CP	Consultation paper
CRA	Credit Rating Agency
CRA Regulation or CRAR	Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit ratings agencies as amended by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011, Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011, Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013, and Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014
ESMA	European Securities and Markets Authority

# 1. Executive Summary

## Reasons for publication

1. The CRA Regulation (CRAR) includes a number of provisions that are designed to provide clarity to the market around whether entities or debt instruments have been subject to initial review or preliminary rating by CRAs, before receiving a credit rating. The objective of these provisions is to mitigate against the effects of rating shopping.
2. Rating shopping can be understood as occurring when an issuer engages with a number of credit rating agencies with a view to selecting only those credit rating agencies that will provide the most favourable assessment for the entity or debt instrument. In choosing to appoint only those credit rating agencies that provide the most favourable assessment, risks are created for investor protection and financial stability. Specifically, risks of ratings inflation and lack of applied methodological rigour<sup>1</sup>. While concerns around this practice were initially focused on structured finance ratings<sup>2</sup>, recent revisions of the CRA Regulation have expanded the area of focus to the broader spectrum of entities and debt instruments assessed by CRAs.
3. The rationale of the CRAR approach is to provide investors and the market with greater visibility on which entities or debt instruments may have been subject to rating shopping. This will enable them to be forewarned about the levels of rating assigned to these entities or debt instruments. It will also reduce the incentive for issuers to engage in this behaviour in the future.
4. For a number of years ESMA has been engaging with CRAs to assess the current practices in the market around initial reviews and preliminary ratings. The purpose of this has been to identify possible inconsistencies in CRAs practices, and define necessary steps to address these inconsistencies. In addressing these inconsistencies ESMA aims to ensure that the CRAR's provisions to mitigate against rating shopping function in a manner that is as consistent and effective as possible.
5. The purpose of this Consultation Paper is to propose guidance that will address the existing inconsistencies, and by extension reduce the risks that are posed by rating shopping to the extent it is possible under the existing provisions of the CRA Regulation.

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<sup>1</sup> [European Commission: Impact Assessment Accompanying the Proposal for a Regulation on Credit Rating Agencies. 12.11.2008.](#)



## **Contents**

6. The proposed guidance is structured according to three main parts that establish:
  - ESMA’s views on how the term “initial review and preliminary rating” should be understood for the purposes of the CRAR’s public disclosure requirements.
  - ESMA’s view on the content and timing of CRAs public disclosures for interactions that meet the standard of “initial review and preliminary rating”.
  - ESMA’s views on the steps to ensure these public disclosures are more accessible for investors and the market.

## **Next Steps**

7. ESMA will consider the responses it receives to this CP in Q3 2021 and expects to publish a final report by end of Q4 2021.

## 2. Introduction

### CRAR Requirements to Address Rating Shopping

1. One of the objectives of CRAR is for CRAs to take measures that avoid situations where issuers request preliminary rating assessments of entities or debt instruments from a number of CRAs in order to identify the highest credit rating for those entities or debt instruments. CRAR seeks to achieve these objectives through greater transparency via public disclosures and supervisory reporting.
2. To give effect to these objectives, CRAR includes recitals that elaborate on the responsibilities of CRAs and issuers vis a vis rating shopping, as well as requirements for public disclosures to provide clarity to the market (c.f. Section D of Annex I of the CRA Regulation) and reporting obligations to ESMA.
3. For example, the level 1 regulatory requirements for initial review or preliminary ratings under the CRAR (Annex I Section D point 6) states:
  - *A credit rating agency shall disclose on its website, and notify ESMA on an ongoing basis, information about all entities or debt instruments submitted to it for their initial review or for preliminary rating. Such disclosure shall be made whether or not issuers contract with the credit rating agency for a final rating.*
4. This provision is supported on the supervisory side by an additional level 2 regulatory requirement relating to reporting for the purpose of ESMA supervision under Article 9 paragraph 1 of the RADAR Regulatory Technical Standard:
  - *As referred to in Article 21(4)(e) of Regulation (EC) No 1060/2009, credit rating agencies shall report data on all credit ratings and rating outlooks issued or endorsed, or issued in a third country and not endorsed as referred to in Article 1(5), including information on all entities or debt instruments submitted for their initial review or for preliminary rating, as referred to in point 6 of Part I of Section D of Annex I to Regulation (EC) No 1060/2009.*
5. A final piece of regulatory context is provided by recital (41) of the initial CRA Regulation, which sets out the following justification for the requirements on preliminary ratings:
  - *Credit rating agencies should take measures to avoid situations where issuers request the preliminary rating assessment of the structured finance instrument concerned from a number of credit rating agencies in order to identify the one offering the best credit rating for the proposed structure. Issuers should also avoid applying such practices.*

### Inconsistencies in Application of CRAR Requirements

6. The consistent and effective application of these provisions is hampered by a number of factors. First, the absence of a common understanding as to what interactions constitute



an initial review or preliminary rating. Second, the lack of specific provisions setting out what information should be included in these disclosures, and how often it should be disclosed. Third the lack of a central location from which the disclosures of each CRA can be accessed or compared.

7. Taking these in turn, the lack of a common understanding for what constitutes an initial review or preliminary rating means that the interactions CRAs are currently including in their public disclosures are not comparable.
8. In addition, the lack of consistency in the information contained within these disclosures means that investors do not have comparable data points to effectively identify which issuances or instruments were subject to initial review or preliminary rating by different CRAs. Furthermore, the misalignment of the timing of CRAs public disclosures means that a full picture of which issuances were assessed by which CRA, is available at a later stage after the initial interactions.
9. Finally, the dispersion of these public disclosures, on different areas of multiple CRAs websites, either behind a registration barrier or not, means that it is onerous (and given the low levels of comparability, not worthwhile) to collate this information.
10. The cumulative effects of these inconsistencies are:
  - Investors are unable to do due diligence on whether an entity or debt instrument has been subject to rating shopping.
  - CRAs are unable to conduct their own due diligence on whether an entity or debt instrument that has been presented to them for initial review or preliminary rating has been subject to rating shopping by the issuer.
  - ESMA is unable to conduct market wide analysis on the prevalence of rating shopping as the data reported into RADAR for “instruments submitted for initial review or preliminary rating” is different depending on the reporting CRA.
11. To address these issues and to ensure the smooth function of CRAR’s provisions in this area, the topic of initial reviews and preliminary ratings was included in ESMA’s 2021 Annual Work Programme<sup>3</sup>.

### **Objectives of ESMA Guidance**

12. To address these issues ESMA proposes to provide guidance that establishes what types of interactions constitute the provision of a preliminary rating. As a first step, the development of a consistent understanding, will have a positive impact for the effectiveness of the related provisions.

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<sup>3</sup> [2 October 2020 ESMA Annual Work Programme 2021](#)

13. In addition, ESMA proposes to harmonise the content and timing of these disclosures. Greater consistency of information within these disclosures will allow for easier identification of entities or debt instruments across different CRAs public disclosures. Greater alignment for the timing of these disclosures will mean this information can be consolidated in a timelier manner. Finally, a centralised point through which all CRAs public disclosure documents can be accessed will facilitate the collation and comparison of this information across CRAs.
14. This Consultation Paper does not cover the reporting of initial reviews or preliminary ratings to ESMA's RADAR reporting system under Commission Delegated Regulation (EU) 2015/2<sup>4</sup>. ESMA will assess how the revised common understanding for initial review or preliminary rating contained within this guidance should be considered for CRA's RADAR reporting requirements and may update the RADAR reporting instructions to reflect this.

### **3. Common Understanding Initial Review or Preliminary Rating**

#### **Translating Requirements to a Common Understanding**

15. The first step of developing this guidance is to develop the common understanding of the interactions that should be considered as initial review or preliminary rating. While CRAR's legislative references provide some context as to the objectives and rationale for the disclosure requirements in this area, they do not provide specific details as to the types of interactions or behaviours that could be considered to meet the standard of initial review or preliminary rating.
16. In devising such a common understanding, a useful starting point is the IOSCO Report on Other CRA Products (OCP) from 2017<sup>5</sup>. This report was developed by IOSCO Committee 6 with the purpose of developing a better understanding of the credit rating industry and in particular certain non-traditional, credit related products and services. Examples of the types of products assessed included "private ratings", "confidential ratings", "expected ratings" and "indicative ratings", amongst others. By building on the common understandings that were developed at a global level, ESMA will ensure that its guidance shares a level of consistency with the views of other regulators in this area.
17. Developing this report involved significant levels of interaction with CRAs to understand the specifics of their various product offerings and ultimately resulted in a categorisation of CRAs non-credit rating product offerings into six groups; OCP-Research, Private-OCP, Non-Final OCP, OCP-Part of the Rating Process, OCP-Outside of the Rating Process, OCP Hybrids.

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<sup>4</sup> [Commission Delegated Regulation \(EU\) 2015/2](#)

<sup>5</sup> [FR18/2017 Other CRA Products – Final Report](#)

18. Of these six groups, the one which has the greatest relevance for the types of interaction that may give rise to rating shopping, are the group of products categorised as “Non-Final OCP”, or non-final other CRA products.

**Non-Final OCP:** These are products and services offered by CRAs which:

- provide a preliminary or initial assessment of the creditworthiness of an entity or obligation in respect of an existing, proposed or hypothetical financial instrument.
- are assessments that are preliminary or initial because either the information available to the CRA is not complete or because the issuer or arranger has not requested the CRA to issue a complete or final Traditional Credit Rating.
- typically use the same established and defined rating symbology as it would for a final Traditional Credit Rating (although a CRA may use a prefix or suffix to denote that the assessment differs from a Traditional Credit Rating); and
- provide a preliminary or initial assessment that is not a final Traditional Credit Rating but may be converted into (or replaced with) a final Traditional Credit Rating if certain conditions are met.

### **Common Understanding of Initial Review or Preliminary Rating**

19. The categorisation of Non-Final OCPs is particularly useful when looking to develop a common understanding of the types of interactions that meet the standard of initial review or preliminary rating under CRAR. The reason for this being that the characteristics of this category of product capture the full spectrum of formal and informal interactions that may occur between an issuer and a CRA.
20. For example, when engaging in rating shopping, the issuer would most likely be seeking an initial assessment in respect of a hypothetical financial instrument. The assessment provided by the CRA would, in this case, necessarily be preliminary as the information available to it would be incomplete as the instrument would be non-final. The most valuable information to the issuer, and therefore most relevant for rating shopping would also involve the communication of a defined rating symbol as it would for a final credit rating. At the more formal end of the spectrum of interactions, there would be the communication of a defined rating symbol and the possibility the CRA’s assessment may be converted into a final credit rating if certain conditions are met.
21. The below table aims to show how the characteristics of the Non-Final OCPs, identified by IOSCO, have been identified as relevant for CRARs term “initial review and preliminary rating” and the interactions that are relevant for public disclosure.

IOSCO Other CRA Products	CRA Regulation	
<p><b>Non-Final OCP:</b> These are products and services offered by CRAs which:</p> <ul style="list-style-type: none"> <li>provide a preliminary or initial assessment of the creditworthiness of an entity or obligation in respect of an existing, proposed or hypothetical financial instrument;</li> <li>are assessments that are preliminary or initial because either the information available to the CRA is not complete or because the issuer or arranger has not requested the CRA to issue a complete or final Traditional Credit Rating;</li> <li>typically use the same established and defined rating symbology as it would for a final Traditional Credit Rating (although a CRA may use a prefix or suffix to denote that the assessment differs from a Traditional Credit Rating); and</li> <li>provide a preliminary or initial assessment that is not a final Traditional Credit Rating but may be converted into (or replaced with) a final Traditional Credit Rating if certain conditions are met.</li> </ul>	<p><b>Interactions meeting standard of initial review</b></p>	<p style="text-align: center;">↑</p> <p><b>Interactions relevant for CRAR initial review or preliminary rating disclosure requirements</b></p> <p style="text-align: center;">↓</p>
	<p><b>Interactions meeting standard of preliminary rating</b></p>	

22. Based on this comparison, ESMA is proposing that the following common understanding of interactions to be considered as “initial review or preliminary rating” for the purposes of CRARs public disclosure requirements.

<b>Common Understanding of Initial Review or Preliminary Rating</b>
<p>For the purpose of the public disclosures that are provided in accordance with Annex I Section D paragraph 6, a CRA is understood as providing an initial review or preliminary rating of an entity or debt instrument when:</p> <ol style="list-style-type: none"> <li>i. it provides a creditworthiness assessment in respect of an existing, proposed or hypothetical financial instrument;</li> <li>ii. using the same established and defined rating symbology as it would for a final credit rating (although a CRA may use a prefix or suffix to denote that the assessment differs from a credit rating);</li> <li>iii. that results in a preliminary or initial assessment that is not a final credit rating but may be converted into (or replaced with) a final credit rating if certain conditions are met.</li> </ol>

23. The logic behind this approach is that it is broad enough to capture informal assessments that do not correspond to a specific or defined product, as well as those preliminary rating products that issuers contract with CRAs to provide. At the same time the approach is narrow enough to ensure that it is focused on those type of interactions that involve the communication of a defined rating symbol, which would be the types of interaction most relevant for rating shopping. As a result, it captures the spirit of the regulation by ensuring that the most relevant informal and formal interactions that provide assessment of an entity or debt instrument before it receives a credit rating are publicly disclosed.

### **Separate Treatment for Structured Finance Instruments**

24. Given the fundamental differences between Structured Finance Instruments and more standard corporate debt issuances, a question arises as to whether this understanding is sufficiently clear to capture the type of interactions that occur between CRAs and the issuers of those products, prior to them receiving a final credit rating.

25. For this reason, ESMA is requesting specific feedback from the CRAs and the issuers of these instruments as to whether further refinement of this guidance is required to accommodate the interactions that occur around Structured Finance Instruments, or whether a stand-alone element is necessary to account for these instruments.

#### **Questions for CRAs**

- 1. Do you agree that the common understanding would improve the quality of your CRA's disclosures on entities or debt instruments submitted for initial review or preliminary rating? If you do not agree, please explain.**
- 2. Do you agree that the common understanding is applicable also to initial review or preliminary ratings provided on Structured Finance Instruments? If you do not agree, please explain.**

#### **Questions for Issuers and Users of Ratings**

- 3. Do you agree that the common understanding is reflective of your interactions with CRAs and would capture the broad spectrum of assessments that would be provided prior to assigning a credit rating?**

## 4. Content of Public Disclosures

26. Having determined what practices are to fall under these provisions, the next step is to ensure that investors and the market receive harmonised data points in disclosure and supervisory reporting.
27. From ESMA's perspective four pieces of information are important to be included in public disclosures. These pieces of information are needed to enable the reader to reliably identify the entity or debt instrument that was assessed, and the date when it was assessed by a CRA.
28. Taking these in turn, the name of the entity or debt instrument (issuer/entity name) is relevant and should be reasonably feasible given most CRAs already provide this in their disclosures. Second, while the LEI or ISIN applicable to the entity or instrument is not currently included in any CRA's disclosures this should be possible if the timing of the publication was sufficiently adjusted (see section 5). Third, information on asset class/industry segment should also be feasible to include as it is currently being disclosed by CRAs. Finally, the month/year in which the initial review or preliminary rating was provided should also be included as this is needed for the reader to understand the timeline of the entity or instruments assessment.
29. Should CRAs wish to include additional data points this should not be precluded. For example, the rating level communicated by the CRA would be an element that is not currently evidenced in the current market practice. It is also not proposed as part of this guidance on the basis that it would risk introducing information into the market that could not be fully understood without an even higher level of disclosure on what was assessed. However, it is an example that there could be additional elements that CRAs could add to their disclosures to improve the levels of transparency they provide.

### Content of Public Disclosures on Initial Review or Preliminary Rating

When publishing its public disclosures that are provided in accordance with Annex I Section D paragraph 6, a CRA should ensure that the following points of information are included for each instance where it has provided an initial review or preliminary rating:

- i. The name of the entity or debt instrument.
- ii. The LEI or ISIN of the entity or debt instrument.
- iii. The segment / asset class of the entity or debt instrument.
- iv. The date the initial review or preliminary rating was provided.

#### **Questions for CRAs**

- 4. Do you agree that the information to be disclosed is feasible and that it will improve the quality of your CRA's disclosures in this area? If you do not agree, please explain.**

#### **Questions for Issuers and Users of Ratings**

- 5. Do you agree that the information to be disclosed here will help in developing a clearer picture of which entities or instruments have been subject to initial review or preliminary rating? If you do not agree, please explain.**

## 5. Timing of Public Disclosures

30. An additional issue to be addressed is the timing of these public disclosures as well as the timing of rating reporting to ESMA. Ideally, a CRA would disclose that it had provided a preliminary rating on an entity or debt instrument as soon as it realised that it would not be providing a credit rating on the entity or debt instrument, or when it received the mandate itself. This would ensure that other CRAs were able to monitor for the possibility of rating shopping by the issuer at the earliest possible time.
31. However, it is also noted that some CRAs prefer to schedule the disclosure of this information after the instrument has been awarded a credit rating by a CRA, out of market sensitivity concerns. For example, if a CRA was to disclose that an issuer was putting together a transaction, before the market was aware of such an event this could have negative consequences for the issuer. As a result, CRAs prefer to wait until a rating has been provided and then disclose that they had provided a preliminary rating. In reality, this involves CRAs disclosing an updated list of preliminary ratings at a very long delay (i.e. every quarter), as this achieves the same result with fewer monitoring resources.
32. An additional complication is the lack of coordination between the publication times of CRAs disclosures. The greater the time gap between the publication of a CRAs disclosures with that of another CRA, the less useful the information contained within these disclosures for developing an overall picture of which CRAs were assessing which instruments.
33. To address these issues, the guidance should have two elements addressing the timing of public disclosures. One element that harmonises the date when CRAs public disclosures, or lists, are published, and another element that harmonises the timeline by which CRAs add items to these lists.
34. The guidance below aims to achieve both these objectives. First, by ensuring that all CRAs move to a monthly publication of their public disclosures, and that this occurs on the same day of the month. Second, that the information is added to these lists according to a harmonised timeline, that minimises the time lag between when an assessment is provided and when it is disclosed to the market.
35. In effect, the proposed guidance will mean that each CRA will publish an updated list at the same time each month, and that the information included on this list will be added on a rolling basis, with a maximum delay of 30 calendar days from when the initial review or preliminary rating was provided, unless the CRA determines that a credit rating has not yet been provided for the entity or instrument.
36. If the CRA cannot determine that a credit rating has been provided within this timeline, then it should update its list by 30 days of the end of the month in which the final public credit rating was provided for that entity or debt instrument, at the latest.



**CRAs should ensure that the list of issuers and issuances for which they have provided an initial review or preliminary rating is published by:**

- The first Wednesday of each month.

**CRAs should ensure the list is updated to include those issuances or issuers for which that CRA has provided an initial review or preliminary rating according to the following timeline:**

- Within 30 calendar days of when the initial review or preliminary rating was provided unless it can determine that a credit rating has not been provided for that entity or debt instrument.
- If this cannot be determined, it should be included on the list no later than 30 days after the end of the month in which a credit rating was provided for that entity or debt instrument.

37. For example, if on 15 January a CRA provided an initial review on a transaction, and had no further interaction with the issuer, it would update its list with this information for the first Wednesday in March, unless it could determine that a credit rating had not been provided by another CRA. If it could not, and the transaction were to go on to receive a credit rating from another CRA on 20 March, that CRA would need to make sure that its public disclosure for May included this information, at the latest. However, if that CRA was in a position to include this information on its April disclosure it should make every effort to do so.

## Timing of Public Disclosures

1. When publishing its public disclosures that are provided in accordance with Annex I Section D paragraph 6, a CRA should ensure that the list of entities or debt instruments for which they have provided an initial review or preliminary rating is published by:
  - i. The first Wednesday of each month.
2. CRAs should ensure the list is updated to include those entities or debt instruments for which that CRA has provided an initial review or preliminary rating:
  - ii. Within 30 calendar days of when the initial review or preliminary rating was provided unless it can determine that a credit rating has not been provided for that entity or debt instrument.
  - iii. If this cannot be determined, it should be included on the list no later than 30 days after the end of the month in which a credit rating was provided for that entity or debt instrument.

## Questions for CRAs

6. **Do you agree that the proposed timing of these disclosures is feasible and will increase the value of these disclosures? If you do not agree please explain.**

## Questions for Issuers and Users of Ratings

7. **Do you agree that the proposed timing of these disclosures will better enable investors and the market to identify where rating shopping may have occurred? If you do not agree please explain.**
8. **Do you foresee any difficulties with the timing of these disclosures and the timing of your regulatory disclosures to the market?**
9. **What is the value of CRAs disclosing that they provided an initial review or preliminary rating in cases where a final public credit rating is ultimately not provided for an entity or debt instrument?**

## 6. Accessibility of Public Disclosures

38. Once the content and timing of CRA's public disclosures has been addressed, it is necessary to improve the ability of investors and the market to access this information and compare it with the credit ratings that were ultimately assigned to that entity or debt instrument.
39. To do this, some additional steps are necessary on the part of CRAs and ESMA. First, CRAs should ensure that their public disclosures are provided in a standard format that is easily accessed and compared. Currently the ability of investors to easily compare disclosures across CRAs is limited by these public disclosures being provided in document formats that do not allow for the information to be easily compiled or assessed on a systematic basis. To address this, ESMA is proposing a standardised disclosure template, that can be added to on a rolling basis<sup>6</sup>. This will result in all CRAs publishing their disclosures in the same format with the same level of accessibility and comparability. This will enable investors to easily compile and compare disclosures made by different CRAs. Second, CRAs should ensure that this public disclosure document for initial reviews or preliminary ratings is published on a section of their websites that can be accessed without barriers of registration. Third, CRAs should provide and update ESMA with the link to the section of the website where the standardised disclosure template is located. Finally, ESMA will include these links in a single location on its website.
40. This will ensure that it is possible to access all CRAs public disclosures for initial review and preliminary ratings from a single location. In addition, the information contained within these disclosures can then be cross-referenced with the information contained within the [European Rating Platform](#).
41. In time, and depending on the quality of the supervisory reporting that is received under RADAR, ESMA can assess whether it is feasible to supplement these disclosures with a report that draws on the information submitted by CRAs on their preliminary rating activity to ESMA's RADAR system.

### Accessibility of Public Disclosures

When publishing its public disclosures that are provided in accordance with Annex I Section D paragraph 6, a CRA should ensure that:

- i. Its public disclosures are provided using the standardised template proposed by ESMA.
- ii. The standardised template is published on a section of the CRA's website that is free from registration barriers.

<sup>6</sup> Please see proposed Standardised Disclosure Template in Annex IV.

- iii. It notifies ESMA of the location of the standardised disclosure template on its website in order for ESMA to include a link to this location on a section of the ESMA website.

#### **Questions for CRAs**

- 10. Do you agree that centralising accessibility to this information will improve the value of CRAs disclosures on an overall basis? If you do not agree please explain.**

#### **Questions for Issuers and Users of Ratings**

- 11. Do you agree that centralising accessibility to this information will improve your ability to assess whether an entity or debt instrument has been subject to rating shopping? If you do not agree please explain.**

#### **Question for All Respondents**

- 12. Do you consider there is value in ESMA providing a standardised disclosure template for these public disclosures? Do you have any additional comments on the standardised disclosure template.**

## **7. Conclusion**

42. With this guidance ESMA aims to improve the functioning of CRARs provisions that are designed to address rating shopping. In particular ESMA aims to address the issue of rating shopping through increased levels of transparency to investors and the market. As such ESMA has focused on all aspects of the required disclosures, content, timing, accessibility and comparability. ESMA welcomes the views of all stakeholders on whether these provisions will facilitate the better functioning of CRARs provisions to address rating shopping.

## **8. Next Steps**

43. ESMA is looking for feedback on this consultation paper until 4 August 2021.



## Annex I Guidelines

### 1 Scope

#### Who?

3. These guidelines apply to credit rating agencies established in the Union and registered with ESMA in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies<sup>7</sup>.

#### What?

4. These guidelines concern matters relating to CRAs public disclosures in accordance with Article 10 (2) and Annex I Section D point 6 of the CRA Regulation.

#### When?

5. These Guidelines apply from 1 July 2022.

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<sup>7</sup> OJ L 302, 17.11.2009, p.1.

## 2 Legislative references, abbreviations and definitions

### Legislative References

<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC <sup>8</sup>
<i>CRA Regulation</i>	Regulation (EC) No 1060/2009 of the European Parliament and of the council of 16 September 2009 on credit rating agencies

### Abbreviations

<i>ESMA</i>	European Securities and Markets Authority
<i>CRA</i>	Credit Rating Agency
<i>CRAR</i>	<i>CRA Regulation</i>

## 3 Purpose

6. These guidelines concern matters relating to a CRAs' public disclosures relating to all entities or debt instruments submitted to it for their initial review or preliminary rating.
7. The guidelines set out ESMA's expectations regarding the timing, content and format of these public disclosures. They also set out ESMA's expectations as to what interactions should be considered as initial review or preliminary rating for the purpose of these disclosure requirements.

## 4 Compliance and reporting obligations

### 4.1 Status of the guidelines

8. This document contains guidelines issued pursuant to Article 16 of the ESMA Regulation. In accordance with the Regulation, a CRA must make every effort to comply with the guidelines.

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<sup>8</sup> OJ L 331, 15.12.2010, p. 84.

## 4.2 Reporting requirements

9. ESMA will assess the application of these guidelines by CRAs through its ongoing supervision and monitoring of CRA's activities.

## 5 Guidelines on Disclosure Requirements for Initial Review and Preliminary Ratings

### 5.1 Common Understanding of Initial Review or Preliminary Ratings to be disclosed in accordance with Annex I Section D point 6.

10. For the purpose of the public disclosures that are provided in accordance with Annex I Section D paragraph 6, a CRA is understood as providing an initial review or preliminary rating of an entity or debt instrument when:
  - iv. it provides a creditworthiness assessment in respect of an existing, proposed or hypothetical financial instrument;
  - v. using the same established and defined rating symbology as it would for a final credit rating (although a CRA may use a prefix or suffix to denote that the assessment differs from a credit rating);
  - vi. that results in a preliminary or initial assessment that is not a final credit rating but may be converted into (or replaced with) a final credit rating if certain conditions are met.

### 5.2 Content of public disclosures provided in accordance with Annex I Section D Point 6.

11. When publishing its public disclosures that are provided in accordance with Annex I Section D paragraph 6, a CRA should ensure that the following points of information are included for each instance where it has provided an initial review or preliminary rating:
  - v. The name of the entity or debt instrument.
  - vi. The LEI or ISIN of the entity or debt instrument.
  - vii. The segment / asset class of the entity or debt instrument.
  - viii. The date the initial review or preliminary rating was provided.

### 5.3 Timing of public disclosures provided in accordance with Annex I Section D point 6

12. When publishing its public disclosures that are provided in accordance with Annex I Section D paragraph 6, a CRA should ensure that the list of entities or debt instruments for which they have provided an initial review or preliminary rating is published by:
  - iv. The first Wednesday of each month.
13. CRAs should ensure the list is updated to include those issuances or issuers for which that CRA has provided an initial review or preliminary rating:
  - v. Within 30 calendar days of when the initial review or preliminary rating was provided unless it can determine that a credit rating has not been provided for that entity or debt instrument.
  - vi. If this cannot be determined, it should be included on the list no later than 30 days after the end of the month in which a credit rating was provided for that entity or debt instrument.

### 5.4 Accessibility of Public Disclosures provided in accordance with Annex I Section D 6

14. When publishing its public disclosures that are provided in accordance with Annex, I Section D paragraph 6, a CRA should ensure that:
  - i. Its public disclosures are provided using the standardised disclosure template proposed by ESMA.
  - ii. The standardised disclosure template is published on a section of the CRA's website that is free from registration barriers.
  - iii. It notifies ESMA of the location of the standardised disclosure template on its website in order for ESMA to include a link to this location on a section of the ESMA website.



## Annex II Cost Benefit Analysis

### 44. Draft Guidelines on Disclosure Requirements for Preliminary Ratings and Initial Reviews.

<p>Benefits</p>	<p>These guidelines are intended to improve implementation of the CRA Regulation’s provisions covering initial reviews and preliminary ratings. By improving the implementation of these provisions ESMA aims to ensure that the CRA Regulation is as effective as possible in mitigating against the impacts of rating shopping.</p> <p>ESMA foresees that these guidelines will benefit the following market participants:</p> <ul style="list-style-type: none"> <li>• EU registered CRAs;</li> <li>• potential entrants into the market for credit ratings in the EU;</li> <li>• investors who refer to credit ratings issued by EU registered CRAs in the conduct of their internal due diligence processes.</li> </ul> <p>The guidelines will benefit EU registered CRAs by providing a common understanding for the terms “initial review and preliminary rating”. This common understanding will assist CRAs in their responsibilities to take measures to avoid situations where issuers request multiple assessments for the rating of an entity or instrument. In addition, the guidelines will benefit potential entrants by clarifying ESMA’s supervisory expectations in this area. Finally, the guidelines will benefit investors by improving their ability to conduct their due diligence as to whether an entity or debt instrument has been subject to rating shopping.</p>
<p>Costs</p>	<p>The potential costs for these guidelines can be split into two main categories:</p> <ul style="list-style-type: none"> <li>• Initial costs that will be fixed for all EU registered CRAs; and</li> <li>• ongoing costs that will scale relative to the extent of an EU registered CRAs’ activities.</li> </ul> <p>The initial costs to be borne by all EU registered CRAs registered are the costs related to updating internal policies and procedures to reflect the guidelines, and ensuring that staff are provided with the necessary training to develop familiarity with the new aspects these policies and procedures.</p> <p>The ongoing costs to be borne by all EU registered CRAs are the costs related to the internal monitoring of initial review or preliminary rating activities and the underlying work necessary to reflect these activities in public disclosures. However, It is anticipated that the extent of these costs will increase relative to the a CRAs activities. For example, the costs of monitoring and publishing will be greater for CRAs whose initial review and preliminary rating activities are more extensive. Likewise, for those CRAs whose initial review and preliminary rating activities are not as extensive, the costs of monitoring and disclosing will be lower. As a result, the</p>

guidelines will ensure proportionality from the perspective of these ongoing costs.

There are no costs foreseen relating to investors or other market participants.

**Question for All Respondents**

**13. Do you have any comments on the preliminary cost benefit analysis?**

## Annex III List of Questions

Q1	Do you agree that the common understanding would improve the quality of your CRA's disclosures on entities or debt instruments submitted for initial review or preliminary rating? If you do not agree, please explain.
Q2	Do you agree that the common understanding is applicable also to initial review or preliminary ratings provided on Structured Finance Instruments? If you do not agree, please explain
Q3	Do you agree that the common understanding is reflective of your interactions with CRAs and would capture the broad spectrum of assessments that would be provided prior to assigning a credit rating?
Q4	Do you agree that the information to be disclosed is feasible and that it will improve the quality of your CRA's disclosures in this area? If you do not agree, please explain.
Q5	Do you agree that the information to be disclosed here will be of assistance in developing a clearer picture of which entities or instruments have been subject to initial review or preliminary rating? If you do not agree, please explain.
Q6	Do you agree that the proposed timing of these disclosures is feasible and will increase the value of these disclosures? If you do not agree please explain.
Q7	Do you agree that the proposed timing of these disclosures will better enable investors and the market to identify where rating shopping may have occurred? If you do not agree please explain.
Q8	Do you foresee any difficulties with the timing of these disclosures and the timing of your regulatory disclosures to the market?
Q9	What is the value of CRAs disclosing that they provided an initial review or preliminary rating in cases where a final public credit rating is ultimately not provided for an entity or debt instrument?
Q10	Do you agree that centralising accessibility to this information will improve the value of CRAs disclosures on an overall basis? If you do not agree please explain.
Q11	Do you agree that centralising accessibility to this information will improve your ability to assess whether an entity or debt instrument has been subject to rating shopping? If you do not agree please explain.
Q12	Do you consider there is value in ESMA providing a standardised disclosure template for these public disclosures? Do you have any additional comments on the standardised disclosure template.

Q13

Do you have any comments on the preliminary cost benefit analysis?

## Annex IV Standardised Disclosure Template

Disclosure in accordance with requirements of Annex I Section D 6 of EU Regulation 1060/2009: Initial reviews or preliminary ratings provided on entities or debt instruments by <b>[CRA Name]</b>							
For the purpose of the public disclosures that are provided in accordance with Annex I Section D paragraph 6, a CRA is understood as providing an initial review or preliminary rating of an entity or debt instrument when:							
i. it provides a creditworthiness assessment in respect of an existing, proposed or hypothetical financial instrument;							
ii. using the same established and defined rating symbology as it would for a final credit rating (although a CRA may use a prefix or suffix to denote that the assessment differs from a credit rating);							
iii. that results in a preliminary or initial assessment that is not a final credit rating but may be converted into (or replaced with) a final credit rating if certain conditions are met.							
LEI of entity	ISIN of debt instrument	NAME of entity or debt instrument	SEGMENT or ASSET CLASS of entity or debt instrument	DATE initial review or preliminary rating was provided	[Additional Field 1]	[Additional Field 2]	[Additional Field 3]
[0-9]	[0-9]	[Name]	[SEGMENT OR ASSET CLASS]	[DD/MM/YYYY]	[Free Text]	[Free Text]	[Free Text]