22 March 2023
ESMA43-475-40

# Decision of the Board of Supervisors

To adopt supervisory measures and impose fines in respect of infringements committed by S&P Global Ratings Europe Limited

**The Board of Supervisors ('Board')**

**Having regard to the Treaty on the Functioning of the European Union,**

**Having regard** to 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)[1], as amended ('ESMA Regulation'), and in particular Article 43(1) thereof,

**Having regard** to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies[2] ('Regulation'), and in particular Articles 24 and 36a thereof, as amended,

**Having regard** to 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[3], including rules on the right of defence and temporal provisions,

**Whereas:**

i. Following preliminary investigations, ESMA's Supervisors found in the Supervisory Report dated 3 January 2022 with respect to S&P Global Ratings Europe Limited ('PSI') that there were serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annex III to the Regulation.

ii. Thus, an independent investigating officer ('IIO') was appointed on 4 January 2022 pursuant to Article 23e(1) of the Regulation.

iii. On 30 June 2022, the IIO sent to the PSI his initial Statement of Findings, which found that the entity had committed one or more of the infringements listed in Annex III to the Regulation.

iv. In response to the IIO's initial Statement of Findings, written submissions dated 2 August 2022 were made by the PSI.

v. Following the receipt of written submissions from the PSI, the IIO amended his initial Statement of Findings and incorporated those amendments into his Statement of Findings.

vi. On 19 October 2022, the IIO submitted to the Board his file relating to the PSI, which included the initial Statement of Findings dated 30 June 2022, the written submissions made by the PSI on 2 August 2022 and the Statement of Findings dated 19 October 2022.

vii. On 29 November 2022, the Chair, after having assessed the file submitted by the IIO on 19 October

[1] OJ L 331, 15.12.2010, p. 84.
[2] OJ L 302 17.11.2009, p. 1.
[3] OJ L 282 16.10.2012, p. 23.

2022, concluded that the file was complete.

viii. The Board thoroughly discussed the case at its meeting on 14 December 2022 and expressed agreement with all the IIO's findings. It provided clear directions and delegated to the Chair the finalisation, adoption and submission to the PSI of the Board's initial Statement of Findings.

ix. On 19 December 2022, the Board's initial Statement of Findings was adopted by the Chair on behalf of the Board and sent to the PSI.

x. On 13 January 2023, the PSI provided its written submissions in respect of the Board's initial Statement of Findings.

xi. The Board discussed the case further at its meeting on 22 March 2023 and assessed the written submissions of the PSI.

xii. Pursuant to Article 36a of the Regulation, where the Board finds that a credit rating agency has, intentionally or negligently, committed one of the infringements listed in Annex III, it shall adopt a decision imposing a fine.

xiii. Pursuant to Article 24 of the Regulation, where the Board finds that a credit rating agency has committed one of the infringements listed in Annex III, it shall take a supervisory measure, taking into account the nature and seriousness of the infringement.

**Having considered the IIO's Statement of Findings, the material in the complete file and the written submissions made on behalf of the PSI, the Board sets out below its findings.**

## STATEMENT OF FINDINGS OF THE BOARD OF SUPERVISORS

# 1 Background

1. The PSI is a private limited company incorporated in Ireland on 12 September 2017[4]. Taking into account the PSI's predecessors and relevant restructuring of its group, the PSI is registered as a credit rating agency ('CRA') under the Regulation since 31 October 2011[5].

2. The PSI is one of the leading CRAs registered in the EU. It had the highest market share of EU CRAs in 2020 by annual turnover generated from credit ratings activities and ancillary services at group level in the EU[6] and employed 447 analytical staff[7]. The PSI issues credit ratings on corporates, infrastructures, financial services, international public finance, structured finance, and sovereigns.

[4] Supervisory Report, Exhibit 1, 2020 EU Transparency Report March 2021.pdf, p. 3.
[5] Exhibit 2, ESMA website - CRA authorisation, 16 June 2022, p. 2.
6 Report on CRA Market Share Calculation, 22 December 2021, ESMA80-416-197, p. 6, esma80-416-197_report_on_cra_market_share_calculation.pdf (europa.eu)
[7] Supervisory Report, Exhibit 1, 2020 EU Transparency Report March 2021.pdf, pp. 13 and 18.

3. In the financial year ending 31 December 2021, the PSI generated a total annual revenue derived from credit and non-credit rating activities of EUR 703,424,000[8].

# 2 The facts

4. This case centres on the fact that the PSI disclosed credit ratings prior to the public announcement of the new bond issuances by their issuers. Upon discovery of the premature disclosures, the PSI removed the credit ratings and related publications from its publication channels, including its website, within periods ranging from a few hours to three days. The PSI later published each of the credit ratings again.[9]

## 2.1 The PSI's processes for the release, removal, and re-release of credit ratings

5. The PSI used two different processes for the initial release of credit ratings: the Rating Process Manager ("RPM") process and the New Issuance Desk ("NID") process[10].

6. The RPM process has been used by the Ratings Support/Ratings Operation Specialists ("ROS") team since 2003, for the initial assignment and review of the issuances, as well as for publishing solicited and unsolicited credit ratings of new debt instruments[11].

7. The PSI provided two documents detailing the steps followed and the policies and procedures applied in the RPM process: a narrative document outlining the step-by-step workflow for the RPM publication process (the "RPM Workflow Narrative Document")[12] and the "Guide: Speed to Market (STM) in EMEA C&G" (the "STM Guide")[13].

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[8] S&P Global Ratings Europe Limited Annual Report and Financial Statements for the Financial Year Ended 31 December 2021, pp. 2, 12 and 29.

[9] In this decision, the term "release", when referring to a credit rating, describes the publication of a credit rating on the PSI's Public Platforms. This release can involve the drafting of a rating letter by the PSI (a "Rating Letter"). With regards to the terms "removal" and "withdrawal", the PSI explained its view on the difference between these terms: "A withdrawal is a credit rating action which involves the formal withdrawal of a credit rating, such that the credit rating no longer stands"; whereas a "Removal of a credit rating is an exceptions-based process that … may be utilised in circumstances where S&P is required to remove a credit rating from publication, but does not wish to withdraw it (i.e. because the credit rating itself is correct)" see Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 17, pp. 10-11 and Question 18, p. 11. The PSI indicated that these terms are defined terms of its policies and procedures and that the publication of the PSI's policies and procedures is subject to the PSI's formal governance process, which includes oversight by its Legal department. With regards to the terms "reinstatement", "re-release", and "re-publication" when referring to a credit rating, the PSI stated that it uses these terms interchangeably; there was nothing in the documentation provided by the PSI that would suggest a difference in the meanings of these terms.

[10] For further information on what is presented in this section, see Exhibit 13, CAPR.000046 – Standard Operating Procedure: Withdrawal, Discontinuance and Suspension (9 January 2020), 23 March 2022, Exhibit 14, CAPR.000048 – Ratings Services: Credit Ratings Assignment, Withdrawal & Suspension Policy (29 February 2012) and Guidelines (28 June 2013), 23 March 2022 and Exhibit 15, CAPR.000102 – S&P Global Ratings Policy Manual Chapter: Surveillance and Withdrawal (1 January 2018), 23 March 2022.

[11] Exhibit 1, Supervisory Report, 3 January 2022, para. 83 and Supervisory Report, Exhibit 24, SPGRE response letter 12 May 2021.pdf, 12 May 2021, p. 2.

[12] Supervisory Report, Exhibit 47, RPM Workflow Steps_Final.xlsx, 12 May 2021.

[13] Exhibit 1, Supervisory Report, 3 January 2022, para. 84 and Supervisory Report, Exhibit 133, Guide_STM In EMEA.pdf, 17 July 2020.

8. As to the NID process, the PSI states that it has used it since 2010[14] for new issuances of certain credit ratings that are classified as a "Linked Rating Action". This classification applies to a credit rating which is a "Credit Rating Action that is derived either in whole or in part from another Credit Rating Action" and that does not require a rating committee[15]. It could be termed a "fast track" procedure that is less burdensome than the RPM process.

9. The PSI further explained that the NID process is used in specific circumstances for certain debt types to expedite the release of credit ratings that are derived in whole or in part from another credit rating and where the issue rated does not exceed a limit known as the Estimated Debt Capacity (the "EDC"). The EDC is an estimate of nominal debt that a rated issuer can carry, at which point the PSI's analysts determine whether a new rating committee is required. Since credit ratings assigned by the NID follow on from existing published credit ratings, the process is more mechanical than the RPM process and does not require committee review[16].

10. The PSI provided three documents detailing the steps followed and the policies and procedures applied in the NID process[17]: a narrative document outlining the step-by-step workflow for the NID release process (the "NID Workflow Narrative Document", 12 May 2021)[18], the "Issue Credit Ratings Standard Operating Procedure"[19], and the "New Issuance Desk – Triage Process Manual" (the "NID Manual")[20].

11. In the case at hand, the NID process was used in relation to [Redacted due to confidentiality: Issuer 3] securities ("[Issuer 3] Securities"), [Redacted due to confidentiality: Issuer 2] securities ("[Issuer 2] Securities"), [Redacted due to confidentiality: Issuer 4] securities ("[Issuer 4] Securities") and [Redacted due to confidentiality: Issuer 5] securities ("[Issuer 5] Securities"), while the RPM process was used in the case of [Redacted due to confidentiality: Issuer 1] securities ("[Issuer 1] Securities") and [Redacted due to confidentiality: Issuer 6] Securities ("[Issuer 6] Securities")[21].

12. The Corporate Repository platform ("CORE"), an internal repository where ratings are posted and visible to the PSI's employees[22], has been used as a rating repository at the PSI for more than 20 years[23].

13. To publish the credit ratings it assigns, the PSI uses different tools and platforms[24] (together, the "Public Platforms").

14. First, the PSI uses the website "www.spglobal.com/ratings" (formerly "standardandpoors.com") that can be accessed with a free registration log-in ("SPGI Website"). The PSI specified that,

[14] Exhibit 1, Supervisory Report, 3 January 2022, para. 89.
[15] Exhibit 1, Supervisory Report, 3 January 2022, para. 90.
[16] Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022, para. 5.
[17] Exhibit 1, Supervisory Report, 3 January 2022, para. 93.
[18] Supervisory Report, Exhibit 159, NID Narrative_Final.xlsx, 12 May 2021.
[19] Supervisory Report, Exhibit 163, Issue credit ratings SOP.pdf, 9 July 2018.
[20] Supervisory Report, Exhibit 129, New Issuance Desk – Triage 2.10.20.pdf, 10 February 2020.
[21] Exhibit 1, Supervisory Report, 3 January 2022, para. 78.
[22] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 1, p. 36.
[23] Exhibit 1, Supervisory Report, 3 January 2022, para. 83 and Supervisory Report, Exhibit 24, SPGRE letter 12 May 2021.pdf, 12 May 2021, p. 2.
[24] Exhibit 1, Supervisory Report, 3 January 2022, para. 22.

among the different Public Platforms it uses, the SPGI Website is the one it relies upon to comply with the disclosure requirements in the Regulation[25].

15. In addition, the group of which the PSI is a part uses fee-based services available to subscriber clients. These services are owned by the unregulated firm of the PSI's group S&P Global Market Intelligence ("SPGMI") and are: first, the financial data and information website "CapitalIQ.com/CapIQ" ("CapIQ"); second, the online Ratings Direct platform, which carries the PSI's credit ratings and research, market data, credit risk analytics and related analytical tools ("Ratings Direct"); third, the RatingsXpress platform, a database of current and historical credit ratings ("RatingsXpress"); and finally, the CreditWire platform, a tool providing access to external platforms such as Bloomberg and Dow Jones and communicating with them ("CreditWire").

16. Moreover, when removing credit ratings, the PSI used exception policies and procedures set out in Sections 2.6 (for [Issuer 1] and [Issuer 6][26]) and 2.2 (for [Issuer 2], [Issuer 3], [Issuer 4], and [Issuer 5][27]) in the "Operations & Technology: S&P.com/Product Escalations" manual (the "Escalation Manual")[28].

17. Finally, to reinstate the credit ratings, the PSI used the policies and procedures set out in Section 2.2 of the Escalation Manual for the six securities ([Issuer 1], [Issuer 2], [Issuer 3], [Issuer 4], [Issuer 5], and [Issuer 6])[29].

18. To release, remove, and re-release credit ratings, the PSI follows several steps outlined in the relevant documentation presented in this subsection. The PSI claimed that it was not feasible to provide granular details of each step of a workflow process in its policies and standard operating procedures[30]. The PSI also claimed that this is because it "seeks to ensure that its policies and procedures contain sufficient detail to ensure each process is followed properly and that risk is adequately managed, whilst remaining flexible enough to make sure that the processes can be followed in a range of circumstances"[31]. Finally, the PSI stated that documentary evidence is not always created in the course of completing a step, because some steps will not produce such documentary evidence[32]. The Board examines these claims in greater detail below.

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[25] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 16, p. 9.
[26] Exhibit 1, Supervisory Report, 3 January 2022, para. 88 and PSI's Response to the IIO's RFI, Question 8, p. 5.
[27] Exhibit 1, Supervisory Report, 3 January 2022, para. 95 and PSI's Response to the IIO's RFI, Question 8, p. 5.
[28] Exhibit 1, Supervisory Report, 3 January 2022, para. 79, Supervisory Report, Exhibit 125, Operations & Technology S&P.com Product Escalations v3.3.20.pdf, 12 May 2021 and Supervisory Report, Exhibit 126, D&O Product_S&P.com Escalations (3450_2).pdf, 23 July 2021.
[29] Exhibit 1, Supervisory Report, 3 January 2022, para. 97.
[30] Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022, paras. 36-38.
[31] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 6, p. 4.
[32] In particular: "By both necessity and design, documentary evidence is not always created in the course of completing a step. This is because some steps will naturally not produce or warrant such documentary evidence, and/or it would be overly burdensome or disproportionate to document the particular step e.g. if doing so would cause a delay to the publication of the credit rating". See Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 22.3.

## 2.2 Events related to the premature release, subsequent removal and re-release of the relevant credit ratings

19. This subsection outlines the main facts, as investigated by the IIO and considered by the Board, concerning the ratings assigned to [Issuer 1] Securities[33], [Issuer 2] Securities[34], [Issuer 3] Securities[35], [Issuer 4] Securities[36], [Issuer 5] Securities[37] and [Issuer 6] Securities[38], their premature release (as acknowledged by the PSI) and their subsequent removal and re-release.

20. As noted above, premature release lies at the heart of this case. In this respect, a premature release is a release which occurs before the issuance of the rated security. In the specific case of a solicited credit rating, since the issuer requests the assignment and publication of a credit rating from the CRA, and this rating only exists because it was requested from the CRA pursuant to contractual arrangements, the CRA provides a service, upon request of a legal person and in return for payment. An integral aspect of that service is the timely publication of ratings.

21. In the six instances considered in this case, evidence shows that the credit ratings were published before the issuance of the securities and, therefore, before the time expected by the issuer.

22. [Issuer 3], [Issuer 4], [Issuer 5], and [Issuer 6] each issued one type of note. [Issuer 1] issued two different types of notes; and [Issuer 2] issued three different types of notes. Each type of note was assigned a credit rating by the PSI. The case therefore relates to six releases of securities and a total of nine credit ratings.

23. The PSI stated that it was not aware of the involvement of the Internal Audit, Compliance or Legal department during the removal and second disclosure and publication process related to [Issuer 2], [Issuer 3] and [Issuer 4][39].

24. The PSI also asserted that its internal control mechanisms include a quarterly review process across S&P Global Ratings, coordinated by the Risk and Internal Control Function, to identify potential deficiencies in the internal control structure and areas for control improvement. According to the PSI: “this review considers systemic control issues from various sources: self-identified through control testing, incidents, or independent examinations. Following each quarterly review, the Controls Working Group ("CWG"), comprising employees from Compliance and Risk, Legal, Internal Audit and In-Business Control, holds a follow-up meeting to review the identified control issues and make a final determination of whether a deficiency existed in the internal control structure”[40].

[33] Exhibit 1, Supervisory Report, 3 January 2022, Section 3.1.1.1.1.
[34] Exhibit 1, Supervisory Report, 3 January 2022, Section 3.1.1.1.2.
[35] Exhibit 1, Supervisory Report, 3 January 2022, Section 3.1.1.1.3.
[36] Exhibit 1, Supervisory Report, 3 January 2022, Section 3.1.1.1.4.
[37] Exhibit 4, PSI’s Response to the IIO’s RFI, 23 March 2022, Appendix 1, pp. 23-40.
[38] Exhibit 4, PSI’s Response to the IIO’s RFI, 23 March 2022, Appendix 2, pp. 41-55.
[39] Exhibit 4, PSI’s Response to the IIO’s RFI, 23 March 2022, Question 11, p. 6.
[40] Exhibit 9, PSI’s Comments on the Supervisory Report, 28 January 2022, para. 6.

25. The PSI claimed that, in line with its internal control mechanisms, subsequent to the identification of the premature releases of the securities, the premature release issue was assessed as part of the quarterly controls review process. The PSI further claimed that the issue was then transmitted to the CWG, which convened in November 2021 to consider the risk relating to premature releases, and that the CWG concluded that while some improvements could be made to the PSI's internal controls, there were no systemic deficiencies. According to the PSI, the CWG agreed that the following actions should be implemented: continuing improvements to the NID process (update of the template that is completed when an issue is requested (an "Issue Request Template" [41]) in October 2021 with a section on ratings releases and timing and a section related to Rating Letters); the NID team was reminded to confirm rating release instructions with the relevant analyst; Compliance reminded the analyst team to clarify the release date with issuers before releasing credit ratings; and ongoing monitoring for premature releases of credit ratings by In-Business Control[42].

26. According to the PSI, the Escalation Manual was also updated in October 2021 to introduce requirements (i) to inform Compliance and the in-Business Control group of premature releases; and (ii) to obtain Analytical Manager approval to suppress and re-release a credit rating[43].

27. In this context, it is notable that the premature releases occurred across six different quarters: the second and third quarter of year 2019 ([Issuer 2] and [Issuer 1]); first and second quarter of year 2020 ([Issuer 3] and [Issuer 4]); second and third quarter of year 2021 ([Issuer 5] and [Issuer 6]). Improvements were only implemented from April 2021 onwards.

28. Finally, the PSI highlighted that the premature releases were "extremely rare"[44] compared to the total ratings published. The PSI notably indicated the following: "[Issuer 4], [Issuer 3], [Issuer 2] and [Issuer 5] were released through the NID. Between 2019 and 2021 (the period when the premature releases occurred), the NID published a total of 10,524 credit ratings in EMEA. Therefore, the premature releases represent less than 0.05% of the total number of credit ratings released by S&P during the period in question. [Issuer 1] and [Issuer 6] were released through the RPM process. During 2019 to 2021, 9,494 credit ratings were published through the RPM process in EMEA, and the [Issuer 1] and [Issuer 6] releases were the only premature releases identified (0.02% of the total)."[45]

29. As to the sequence of events detailed above, it remains the case that premature releases took place over an extended period, that ESMA made contact about the issue of premature releases in 2020 and that concrete steps to address the concern were only taken by the PSI in 2021.

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[41] The Issue Request Template is a 'standard email template which an NID member populates with specific data, confirmed by the Analyst, and provides instructions for to NID to process the credit rating. Any relevant documentation is attached to the e-mail and the Analyst also indicates whether a rating letter is required. The confirmed Issue Request Template is sent to the NID mailbox by the Analyst.' The Analyst also is required to approve the completed Issue Request Template by email (in writing). See Exhibit 129 to the Supervisory Report, 'New Issuance Desk – Triage 2.10.20.pdf', p. 31. See also paragraph 13(a) of Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022.

[42] Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022, para. 13. In this regard, see also Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 34, p. 18 and Exhibit 16, CAPR.000052 – Controls Working Group Meeting Summary, 23 March 2022.

[43] Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022, para. 14. See also, Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 40, p. 20.

[44] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 15. 2, 15.3 and 19.5.

[45] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 8, p. 5.

Regarding the point made on the infrequency of premature releases, the Board notes that while it is of course important to consider that such instances are rare, the Board takes the view that the issues detailed below were serious and occurred at different points in time over a period of several years.

### 2.2.1 [Issuer 1] Securities

30. On 7 February 2020, ESMA received a formal complaint "about possible inadequate and deficient procedures at [the PSI] regarding the premature publication on 9 September 2019 of a press release accompanying the publication of two credit ratings on financial instruments to be issued" from the Netherlands Autoriteit Financiële Markten ("AFM")[46]. This complaint focused on the two credit ratings assigned by the PSI to the issuance by [Issuer 1].

31. The PSI and [Issuer 1] (and related subsidiaries) have had a commercial relationship since November 1999[47]. [Issuer 1] informed the PSI of new issuances at an undisclosed time, following which [Issuer 1] and the PSI exchanged e-mails between 3 September 2019 and 6 September 2019 regarding the terms and conditions of the issuance[48]. On 6 September 2019, the PSI's lead analyst "[Redacted due to confidentiality: CD]" ([redacted due to confidentiality], Credit Analysis, Financial Services, Insurance[49]) initiated the internal process to rate the [Issuer 1] Securities in question[50].

32. On 9 September 2019 at 11:30 AM CET[51], the PSI's rating committee for [Issuer 1] Securities convened and unanimously agreed with the recommendation to assign a BB+ rating to the tier 1 issue and a BBB- rating to the tier 2 issue[52]. [CD] then supplied [Issuer 1] with a prepublication notice along with a draft PDF of a research update report[53]. The pre-publication notice stated that the research update report would be released if [Issuer 1] provided the waiver: "However, if you revert to us before this period has expired and explicitly confirm by email that all comments concerning factual errors and the inadvertent inclusion of confidential information, if any, have been brought to S&P Global Ratings' attention, then we may publish the report as soon as practicable."[54].

33. A phone call took place in the early afternoon of 9 September 2019 during which, according to the PSI[55], the issuer said that they wanted the research update report to be published that day. At 16:19 PM CET, [CD] asked [Issuer 1] by email to review the draft research update report within the next hour and to waive the ordinary 24-hour delay, should [Issuer 1] wish to publish

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[46] Exhibit 1, Supervisory Report, 3 January 2022, para. 25.
[47] Exhibit 1, Supervisory Report, 3 January 2022, para. 38, Supervisory Report, Exhibit 24, SPGRE response letter_12 May 2021.pdf, 12 May 2021, p. 6, and Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022, para. 43.
[48] Exhibit 1, Supervisory Report, 3 January 2022, paras. 39-41.
[49] Supervisory Report, Exhibit 31, 12. Employees_Roles and functions.xlsx, 23 July 2021.
[50] Supervisory Report, Exhibit 35, Job initiation request – 09.06.2019 – [Issuer 1] New Issues.pst, 12 May 2021.
[51] Exhibit 1, Supervisory Report, 3 January 2022, para. 42.
[52] Supervisory Report, Exhibit 44, CMT conclusions for [Issuer 1].docx, 12 May 2021.
[53] Supervisory Report, Exhibit 45, SPGI0000000141.pdf, 9 September 2019 and Supervisory Report, Exhibit 46, SPGI0000000141.0001.pdf, 12 May 2021.
[54] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 16.2, p. 5.
[55] The call and its contents were confirmed by the PSI's analyst. See PSI's written submissions in response to the Board's initial Statement of Findings, para. 9.

the relevant credit ratings by the end of that day[56]. According to the PSI, [Issuer 1]'s response made it clear that the issuer understood that the research update report would be published that day if a waiver was provided[57].

34. On the same day, at 17:00 PM CET [58], the PSI communicated the Rating Letter to [Issuer 1], which requested two adjustments, and said that it would agree with the overall content once these adjustments were made[59]. At 18:03 PM CET, [Issuer 1] e-mailed the PSI with the requested waiver of the 24-hour period, indicating that it was happy with the publication of the document before the 24-hour review period had elapsed[60].

35. Following receipt of the waiver, by 18:39 PM CET, [CD] communicated it internally to the relevant teams, together with her approval to publish the research report and [Issuer 1]'s feedback on the draft research update report. The credit ratings and the update report titled " [Issuer 1] Notes Assigned 'BBB-' And 'BB+' Ratings" were released on the relevant Public Platforms later that same day, between 20:27 PM CET and 20:37 PM CET[61]. At 20:44 PM CET, [Issuer 1] was informed of the publication and acknowledged receipt of the publication notice[62].

36. On the same day, at 20:36 PM CET[63], [Redacted due to confidentiality: WX] of the PSI's Editorial team emailed [CD] to confirm that the research update report had been transmitted to the external CreditWire news services on 9 September 2019[64]. On 10 September 2019, at 7:31 AM CET[65], [CD] emailed [Issuer 1] the pdf version of the final research update report[66].

37. On 10 September 2019, at 8:51 AM CET[67], [Issuer 1] e-mailed [CD] requesting the removal by the PSI of the research update report from the relevant platforms, as it had been published externally without [Issuer 1] reviewing the final version, and prior to the announcement to the market of the issuance of the [Issuer 1] Securities[68]. At 9:02 AM CET, [CD] contacted the Ratings Support team to advise that [Issuer 1] had delayed their announcement to the market and asked the PSI to retract the research update report from Public Platforms until the issuer was ready to announce[69]. As asserted by the PSI, this led to discussions involving Legal and Compliance to determine the best approach to removal[70]. On the same day, at 13:25 PM CET[71],

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[56] Supervisory Report, Exhibit 48, SPGI0000000168.pdf, 12 May 2021. Further information regarding the 24-hour Waiver has been provided by the PSI in the PSI's Response to the IIO's RFI (see Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 14, pp. 7-8).
[57] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 16.2, p. 5.
[58] Exhibit 1, Supervisory Report, 3 January 2022, para. 42.
[59] Supervisory Report, Exhibit 50, SPGI0000000192.pdf, 12 May 2021.
[60] Supervisory Report, Exhibit 51, SPGI0000000227.pdf, 12 May 2021.
[61] Exhibit 1, Supervisory Report, 3 January 2022, para. 42. See also Supervisory Report, Exhibit 13, SP Response_16 July 2020.pdf, 16 July 2021, p. 4 and Supervisory Report, Exhibit 57, SPGI0000000658.pdf, 12 May 2021.
[62] Supervisory Report, Exhibit 58, SPGI0000000177.pdf, 12 May 2021.
[63] Exhibit 1, Supervisory Report, 3 January 2022, para. 129.
[64] Supervisory Report, Exhibit 57, SPGI0000000658.pdf, 12 May 2021.
[65] Exhibit 1, Supervisory Report, 3 January 2022, para. 43.
[66] Supervisory Report, Exhibit 58, SPGI0000000177.pdf, 12 May 2021 and Supervisory Report, Exhibit 59, SPGI0000000177.0001.pdf, 12 May 2021.
[67] Exhibit 1, Supervisory Report, 3 January 2022, para. 45.
[68] Supervisory Report, Exhibit 60, SPGI0000000228.pdf, 12 May 2021.
[69] Exhibit 1, Supervisory Report, 3 January 2022, para. 130 and Supervisory Report, Exhibit 61, SPGI0000000360.pdf, 12 May 2021.
[70] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 16.5, p. 6.
[71] Exhibit 1, Supervisory Report, 3 January 2022, para. 130.

the PSI's Editorial team confirmed that the research update report had been removed from the RatingsDirect platform[72]. In its 24 June 2020 and 16 July 2020 correspondence with ESMA Supervisors, the PSI said that on 10 September 2019 at approximately 13:20 PM CET, it removed the 9 September 2019 research update report from www.standardandpoors.com and from other Public Platforms (CapIQ and RatingsXpress)[73].

38. In its 16 July 2020 correspondence with ESMA Supervisors, the PSI indicated that the 9 September 2019 research update report was removed from CreditWire (communicating to external platforms such as Bloomberg and Dow Jones) on 11 September 2019 at 19:29 PM CET[74]. On 11 September 2019 at 20:08 PM CET[75], SPGI's' Marketing Intelligence team confirmed via email to [CD], along with other members of the Analytical, Editorial, IT and Compliance teams, that Bloomberg and Dow Jones internal databases had removed the research update report[76].

39. With respect to the credit ratings themselves, on 11 September 2019 at 17:50, [Issuer 1] and the PSI agreed to change the status of the credit ratings from "public" to "confidential", pending notice from [Issuer 1] to re-release them[77]. The credit ratings for the [Issuer 1] Securities were removed from all the Public Platforms on that day[78].

40. The PSI did not provide any documentation to show that it outlined to the public the reasons for the decision to discontinue the two [Issuer 1] Securities credit ratings between 10 September 2019, when it was instructed by [Issuer 1] to do so, and the publication of the editor's note on 12 September 2019 explaining the re-release[79].

41. On 12 September 2019, [Issuer 1] emailed the PSI to notify it about the imminent publication of a market announcement regarding the [Issuer 1] Securities on the Bloomberg platform and confirming its agreement to the publication by the PSI of the [Issuer 1] Securities' credit ratings as soon as possible[80]. The credit ratings were subsequently re-released on Public Platforms and the research update report was re-published on 12 September 2019, together with an editor's note explaining the re-publication[81]. The editor's note mentioned: "We are reissuing this report, following the announcement of the issuances to the markets". It did not specify that the

[72] Supervisory Report, Exhibit 67, SPGI0000000368.pdf, 12 May 2021.
[73] Supervisory Report, Exhibit 12, SP Response_24 June 2020.pdf, 24 June 2021, p. 4 and Supervisory Report, Exhibit 13, SP Response_16 July 2020.pdf, 16 July 2020, p. 4.
[74] Exhibit 1, Supervisory Report, 3 January 2022, para. 131 and Supervisory Report, Exhibit 13, SP Response_16 July 2020.pdf, 16 July 2020, p. 4.
[75] Exhibit 1, Supervisory Report, 3 January 2022, para. 131.
[76] Supervisory Report, Exhibit 68, SPGI0000000316.pdf, 12 May 2021.
[77] Exhibit 1, Supervisory Report, 3 January 2022, para. 47 and Supervisory Report, Exhibit 70, SPGI0000000165.pdf, 12 May 2021.
[78] Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[79] Exhibit 1, Supervisory Report, 3 January 2022, para. 133.
[80] Exhibit 1, Supervisory Report, 3 January 2022, para. 49 and Supervisory Report, Exhibit 71, SPGI0000000152.pdf, 12 May 2021.
[81] Exhibit 1, Supervisory Report, 3 January 2022, para. 50. See also Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021, Supervisory Report, Exhibit 64, SPGI0000000300_Redacted.pdf, 12 May 2021, Supervisory Report, Exhibit 72, SPGI0000000246.pdf, 12 May 2021, Supervisory Report, Exhibit 73, SPGI0000000247.pdf, 21 May 2021, Supervisory Report, Exhibit 74, SPGI0000000248.pdf, 12 May 2021, Supervisory Report, Exhibit 75, SPGI0000000249.pdf, 12 May 2021 and Supervisory Report, Exhibit 76, SPGI0000000284.pdf, 12 May 2021.

research update report and underlying credit ratings had previously been removed from the website[82].

42. In the actions outlined above, the PSI failed to follow steps mandated by its own procedures and / or did not document those steps, in whole or in part.

43. The PSI claimed that the [Issuer 1] rating was not released prematurely as the issuer gave its consent to the same-day publication of the report. It argued that it "had a genuinely held and reasonable understanding that, by confirming the Release should be made and by granting a waiver that removed the requirement to wait 24 hours before making the release, the issuer intended for the [Issuer 1] Release to be made as soon as possible."[83] Further the PSI "does not consider that it would have been possible to provide a more precise time frame given that the release of a credit rating can involve the input of multiple individuals in different teams."[84] The PSI also raised the argument that "the approach taken by S&P was consistent with the approach taken in every other instance in which a waiver is sought and provided […and that it…] was also in line with ESMA's own guidance [on waiving the 24 hours period]" [85]. In this respect, the Board recalls that in this case, the premature release concerns a release which occurs before the issuance (and public announcement) of the rated security. This issue is independent from the publication further to the receipt of any possible waiver.

44. Notwithstanding the PSI's submissions regarding the waiver provided by the issuer, the central point remains: a premature disclosure, i.e. a disclosure before the issuance of the security, occurred, which could have a possible impact on the financial markets. In this respect, the PSI considered a misunderstanding between itself and the issuer of the securities to have led to the premature release of the ratings. However, the PSI must have robust procedures in place to ensure that it publishes ratings at the correct time; the PSI publishes the ratings, not the issuer.

### 2.2.2 [Issuer 2] Securities

45. The PSI's commercial relationship with the [Issuer 2] Group began on 13 October 1989 and ended on 2 March 2021 after [Issuer 2] requested the withdrawal of their credit ratings[86].

46. On 4 June 2019[87], [Issuer 2] contacted the PSI to request a Rating Letter[88] for the issuance of three [Issuer 2] Securities that was announced that same day, and to supply a table providing all the information related to the securities (the "Term Sheet") of the transaction[89].

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[82] Exhibit 1, Supervisory Report, 3 January 2022, para. 133 and Supervisory Report, Exhibit 190, SPGI0000000152.0001.pdf, 12 May 2021.
[83]See PSI's written submissions in response to the Board's initial Statement of Findings, para. 8.
[84] See PSI's written submissions in response to the Board's initial Statement of Findings, para. 12.
[85] See PSI's written submissions in response to the Board's initial Statement of Findings, para. 13.
[86] Exhibit 1, Supervisory Report, 3 January 2022, para. 51 and Supervisory Report, Exhibit 24, SPGRE response letter_12 May 2021.pdf, 12 May 2021, p. 3.
[87] Exhibit 1, Supervisory Report, 3 January 2022, para. 54.
[88] Supervisory Report, Exhibit 79, SPGI0000000850.pdf, 12 May 2021.
[89] Supervisory Report, Exhibit 80, SPGI0000001043.pdf, 12 May 2021 and Supervisory Report, Exhibit 81, SPGI0000001043.0001.pdf, 12 May 2021.

47. On 5 June 2019[90] at 10:27 AM CET, the PSI's lead analyst ([Redacted due to confidentiality: AB], Credit Analysis, Corporate ratings[91]) exchanged emails with [Issuer 2] to confirm that only a Rating Letter was required for the [Issuer 2] Securities; [AB] also indicated that she would wait for the final documentation to rate [Issuer 2] Securities publicly on the PSI's website[92]. At 11:06 AM CET, [AB] initiated the internal process for issuing the Rating Letter, instructing the relevant teams that only an advanced Rating Letter was required, and that the [Issuer 2] Securities were not to be rated publicly[93]. However, despite these instructions, the credit ratings were released on the relevant Public Platforms by the PSI on 5 June 2019 at 12:15 PM CET[94]. The PSI claimed that this premature publication was the result of an internal misunderstanding[95].

48. [AB] indicated in internal discussions on the same date[96] that, although [Issuer 2] was content for the ratings to remain public, she considered it preferable to suppress and reinstate them once the [Issuer 2] Securities had been issued; she also stressed the urgent need to receive the [Issuer 2] Rating Letter[97]. On 5 June 2019 at 12:29 PM CET[98], "TV" of the PSI's NID team submitted an IT incident ticket instructing the relevant team to hide the [Issuer 2] credit ratings prematurely published earlier that same day[99].

49. Later that day, at 15:37 PM CET[100], the credit ratings were removed from the Public Platforms[101] and the Rating Letter was communicated to [Issuer 2][102]. There was no public disclosure by the PSI outlining the decision or the reasons for the decision to discontinue the three [Issuer 2] Securities credit ratings on 5 June 2019, upon submission by the NID team of the incident ticket explaining that the credit ratings had been prematurely released[103].

50. The PSI stated that it did not withdraw the [Issuer 2] Securities credit ratings, but removed them instead[104].

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[90] Exhibit 1, Supervisory Report, 3 January 2022, para. 55.
[91] Supervisory Report, Exhibit 31, 12. Employees_Roles and functions.xlsx, 23 July 2021.
[92] Supervisory Report, Exhibit 82, SPGI0000000846.pdf, 12 May 2021.
[93] See further in Supervisory Report, Exhibit 83, SPGI0000000943.pdf, 12 May 2021, Supervisory Report, Exhibit 84, SPGI0000000943.0001.pdf, 12 May 2021, Supervisory Report, Exhibit 85, SPGI0000000943.0002.pdf, 12 May 2021, Supervisory Report, Exhibit 86, SPGI0000001008.pdf, 12 May 2021, Supervisory Report, Exhibit 87, Analyst email – identified Rating incorrectly published.pdf, 12 May 2021 and Supervisory Report, Exhibit 88, SPGI0000000946.pdf, 12 May 2021.
[94] Exhibit 1, Supervisory Report, 3 January 2022, para. 56 and Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[95] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 30, p. 16.
[96] Exhibit 1, Supervisory Report, 3 January 2022, para. 57.
[97] Supervisory Report, Exhibit 87, Analyst email – identified Rating incorrectly published.pdf, 12 May 2021.
[98] Exhibit 1, Supervisory Report, 3 January 2022, para. 134.
[99] Supervisory Report, Exhibit 89, [Issuer 2] INC0994094.pdf, 12 May 2021 and Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[100] Exhibit 1, Supervisory Report, 3 January 2022, para. 58.
[101] Supervisory report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[102] Supervisory report, Exhibit 91, SPGI0000000842.pdf, 12 May 2021 and Supervisory report, Exhibit 92, SPGI0000000842.0001.pdf, 12 May 2021.
[103] Exhibit 1, Supervisory Report, 3 January 2022, para. 137.
[104] Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022, paras. 47-48.

51. Finally, on 8 July 2019 at 15:04 PM CET[105], after she requested and subsequently received the final Term Sheet of the [Issuer 2] Securities from [Issuer 2][106], [AB] gave an internal instruction to publish the credit ratings[107]. The credit ratings for the [Issuer 2] Securities were re-released on the Public Platforms on 10 July 2019 at 20:15 PM CET[108].

52. In the actions outlined above, the PSI failed to follow steps mandated by its own procedures and / or did not document those steps, in whole or in part.

### 2.2.3 [Issuer 3] Securities

53. The PSI and [Issuer 3] have had a commercial relationship since 2019[109].

54. On 30 March 2020 at 13:38 PM CET[110], after [Issuer 3] emailed the PSI's lead analyst ([Redacted due to confidentiality: EF], Credit Analysis [Redacted due to confidentiality] Corporate Ratings, EMEA Real Estate[111]) with the preliminary Term Sheet[112] and the confirmation that the proceeds from the [Issuer 3] Securities were intended for refinancing debt[113], the PSI initiated internal processes for the communication of a Rating Letter and immediate release of the ratings[114]. Later that day, at 16:13 PM CET, the PSI released the ratings for the [Issuer 3] Securities on the relevant Public Platforms[115] and the Rating Letter was sent to [Issuer 3][116]. The PSI claimed that this premature publication was the result of an internal misunderstanding[117].

55. On the same day, at 16:37 PM CET[118], [EF] mentioned in internal PSI discussions that she was unsure whether [Issuer 3] would want the issuance of its securities to be announced publicly[119]. Following these discussions, the PSI initiated the internal process for hiding the credit rating in the system and removing it from the PSI's website[120]. At 17:00 PM CET, [Redacted due to confidentiality: GH] of the NID team submitted an IT incident ticket instructing the CORE IT team

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[105] Exhibit 1, Supervisory Report, 3 January 2022, para. 59.
[106] Supervisory Report, Exhibit 20, SPGI0000001066.pdf, 12 May 2021, Supervisory Report, Exhibit 21, SPGI0000001066.0001.pdf, 12 May 2021, Supervisory Report, Exhibit 22, SPGI0000001066.0002.pdf, 12 May 2021, Supervisory Report, Exhibit 23, SPGI0000001066.0003.pdf, 12 May 2021 and Supervisory Report, Exhibit 82, SPGI0000000846.pdf, 12 May 2021.
[107] Supervisory Report, Exhibit 93, Analyst email – permission to republish Ratings.msg.pdf, 12 May 2021.
[108] Exhibit 1, Supervisory Report, 3 January 2022, para. 60 and Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[109] Supervisory Report, Exhibit 24, SPGRE response letter_12 May 2021.pdf, 12 May 2021, p. 9.
[110] Exhibit 1, Supervisory Report, 3 January 2022, paras. 62-63.
[111] Supervisory Report, Exhibit 31, 12. Employees_Roles and functions.xlsx, 23 July 2021.
[112] Supervisory Report, Exhibit 95, SPGI0000000841.pdf, 12 May 2021 and Supervisory Report, Exhibit 96, SPGI0000000841.0001.pdf, 12 May 2021.
[113] Supervisory Report, Exhibit 97, SPGI0000000835.pdf, 12 May 2021.
[114] Supervisory Report, Exhibit 98, SPGI0000000766.pdf, 12 May 2021.
[115] Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[116] Supervisory Report, Exhibit 99, SPGI0000000827.pdf, 30 March 2020 and Supervisory Report, Exhibit 100, SPGI0000000827.0001.pdf, 12 May 2021.
[117] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 31, pp. 16-17.
[118] Exhibit 1, Supervisory Report, 3 January 2022, paras. 64 and 138-139.
[119] Supervisory Report, Exhibit 101, SPGI0000000771.pdf, 12 May 2021.
[120] Supervisory Report, Exhibit 103, [Issuer 3] INC1536119.pdf, 12 May 2021.

to hide the [Issuer 3] credit rating prematurely published earlier that same day[121]. This action followed a same-day phone request to [GH] of the NID team from lead analyst [EF]. A few minutes prior to the call request, [EF] had questioned [GH] via email on the visibility of the credit rating to investors[122]. The credit rating for the [Issuer 3] Securities was then removed later in the day at 18:31 PM CET[123], after [Redacted due to confidentiality: IJ] ([Redacted due to confidentiality], Ratings Content) granted his approval[124].

56. The PSI stated that it did not withdraw the [Issuer 3] Securities credit rating, but removed it instead[125].

57. There is no evidence in the file that the PSI notified [Issuer 3] of the premature disclosure of the credit rating on 30 March 2020 or of its removal later the same day[126].

58. Further, no public disclosure from the PSI has been identified outlining the decision and the reasons for the decision to discontinue the [Issuer 3] Securities credit rating on 30 March 2020, once [EF] had notified the NID team that the credit rating had been prematurely released[127].

59. Finally, on 1 April 2020[128], [EF] contacted [Issuer 3] to indicate that she had become aware of the announcement for the bond issuance and that the PSI would subsequently display the credit rating on the relevant website[129]. [Issuer 3] replied that it had just opened the orderbooks and would keep her updated[130]. The [Issuer 3] Securities credit rating was re-released on Public Platforms the same day[131].

60. In the actions outlined above, the PSI failed to follow steps mandated by its own procedures and / or did not document those steps, in whole or in part.

### 2.2.4 [Issuer 4] Securities

61. The PSI and [Issuer 4] have had a commercial relationship since 2004[132].

[121] Supervisory Report, Exhibit 103, [Issuer 3] INC1536119.pdf, 12 May 2021 and Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[122] Supervisory Report, Exhibit 102, SPGI0000000794.pdf, 12 May 2021.
[123] Exhibit 1, Supervisory Report, 3 January 2022, para. 65. See also Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021 and Supervisory Report, Exhibit 26, Final SPGRE response letter_23 July 2021.pdf, 23 July 2021.
[124] Supervisory Report, Exhibit 105, SPGI0000000775.0002.0001.pdf, 12 May 2021.
[125] Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022, paras. 47-48.
[126] Exhibit 1, Supervisory Report, 3 January 2022, para. 66.
[127] Exhibit 1, Supervisory Report, 3 January 2022, para. 140.
[128] Exhibit 1, Supervisory Report, 3 January 2022, para. 67.
[129] Supervisory Report, Exhibit 108, SPGI0000000824.pdf, 12 May 2021.
[130] Supervisory Report, Exhibit 109, SPGI0000000828.pdf, 12 May 2021.
[131] Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[132] Exhibit 1, Supervisory Report, 3 January 2022, para. 69 and Supervisory Report, Exhibit 24, SPGRE response letter_12 May 2021.pdf, 12 May 2021, p. 12.

62. On 19 June 2020 at 9:36 AM CET[133], [Issuer 4] emailed the PSI's analysts [Redacted due to confidentiality: KL] ([Redacted due to confidentiality], Credit Analysis – Corporate Ratings[134]) and [Redacted due to confidentiality: MN] ([Redacted due to confidentiality], Credit Analysis, Infrastructure Analytical Team[135]) to advise that [Issuer 4] would that day be launching a transaction relating to the [Issuer 4] Securities for which it would require a Rating Letter. On 22 June 2020 at 11:27[136], [Issuer 4] communicated the final Term Sheet to the PSI and requested a Rating Letter from the PSI by 26 June 2020. [Issuer 4] confirmed that the credit rating should be released on the PSI's website only on 30 June 2020 (i.e. the settlement date of the transaction)[137].

63. On 25 June 2020 at 15:26 PM CET[138], [KL] sent internal emails to the relevant teams of the PSI instructing them to send [Issuer 4] an advance Rating Letter on 26 June 2020 and to delay the credit rating release to 30 June 2020[139]. However, despite these instructions, the credit rating was released on the relevant Public Platforms on 26 June 2020 at 10:06 AM CET[140]. The PSI claimed that this premature publication was the result of an internal misunderstanding[141].

64. On 26 June 2020[142], the PSI had internal discussions about hiding the credit rating and removing it from the PSI's website until 30 June 2020[143]. At 10:24 AM CET, [GH] of the NID team submitted an IT incident ticket instructing the relevant team of the PSI to hide, until 30 June 2020, the [Issuer 4] Securities credit rating prematurely published earlier that same day[144]. The credit rating was subsequently removed from Public Platforms later the same day, at 12:10 PM CET[145].

65. The PSI stated that it did not withdraw the [Issuer 4] Securities credit rating, but removed it instead[146].

66. There is no evidence that the PSI notified [Issuer 4] of the premature disclosure of the credit rating on 26 June 2020 and of its removal later on the same day[147].

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[133] Exhibit 1, Supervisory Report, 3 January 2022, para. 71.
[134] Supervisory Report, Exhibit 31, 12. Employees_Roles and functions.xlsx, 23 July 2021.
[135] Supervisory Report, Exhibit 31, 12. Employees_Roles and functions.xlsx, 23 July 2021.
[136] Exhibit 1, Supervisory Report, 3 January 2022, para. 71.
[137] Supervisory Report, Exhibit 114, SPGI0000000107.pdf, 12 May 2021 and Supervisory Report, Exhibit 115, SPGI0000000108.pdf, 12 May 2021.
[138] Exhibit 1, Supervisory Report, 3 January 2022, para. 72.
[139] Supervisory Report, Exhibit 116, [Issuer 4]_internal communication_2020JUN25_NID and analyst.pdf, 12 May 2021.
[140] Exhibit 1, Supervisory Report, 3 January 2022, para. 73 and Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[141] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 32, p. 17.
[142] Exhibit 1, Supervisory Report, 3 January 2022, para. 74.
[143] Supervisory Report, Exhibit 118, SPGI0000000003.pdf, 12 May 2021, Supervisory Report, Exhibit 119, [Issuer 4] – IT informs Rating is re-released – 1.pdf, 12 May 2021, Supervisory Report, Exhibit 120, SPGI0000000078.pdf, 12 May 2021 and Supervisory Report, Exhibit 121, SPGI0000000078.0001.pdf, 12 May 2021.
[144] Exhibit 1, Supervisory Report, 3 January 2022, paras. 141-142, Supervisory Report, Exhibit 119, [Issuer 4] – IT informs Rating is re-released – 1.pdf, 12 May 2021.
[145] Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[146] Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022, paras. 47-48.
[147] Exhibit 1, Supervisory Report, 3 January 2022, para. 76.

67. Further, no public disclosure from the PSI has been identified outlining the decision to discontinue the [Issuer 4] Securities credit rating on 26 June 2020, and the reasons for that decision, upon detection by the NID team that the credit rating had been prematurely released[148].

68. Finally, on 30 June 2020 at 15:28 PM CET[149], the credit rating was publicly re-released on the PSI's website and relevant platforms[150], further to [Issuer 4]'s request received by the PSI that same day[151].

69. In the actions outlined above, the PSI failed to follow steps mandated by its own procedures and / or did not document those steps, in whole or in part.

### 2.2.5 [Issuer 5] Securities

70. On 25 May 2021, the analyst sent the rating request to the PSI's ROS team, who forwarded it to the NID team[152]. After checks by the NID team[153], the NID team generated an Issue Request Template[154], which was populated by the PSI's primary analyst [Redacted due to confidentiality: OP], who requested an immediate release as well as a Rating Letter[155].

71. After further internal steps within the NID team, a Rating Letter was sent to [Issuer 5] on 25 May 2021 at 13:07 PM CET[156] and the rating for [Issuer 5] Securities was released on the PSI's website at 13:05 PM CET[157]. According to the PSI, the credit rating was published due to a misunderstanding by the analyst in interpretating documentation provided to the PSI by the issuer[158].

72. After receiving the Rating Letter, [Issuer 5] sent an email to the NID team asking if the rating could be made public the next day[159]. After receiving confirmation from the PSI's primary analyst [OP][160], the NID team sent an email to the PSI's analytical manager "BDT" to ask for his approval

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[148] Exhibit 1, Supervisory Report, 3 January 2022, para. 144.
[149] Exhibit 1, Supervisory Report, 3 January 2022, para. 77.
[150] Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021, Supervisory Report, Exhibit 122, SPGI0000000061.pdf, 12 May 2021 and Supervisory Report, Exhibit 124, 'SPGI0000000137.pdf, 12 May 2021.
[151] Supervisory Report, Exhibit 123, SPGI0000000116.pdf, 12 May 2021.
[152] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 1, p. 24, Exhibit 17, CAPR.000042, Email – FW: URGENT / Rating Confirmation Letter for [Issuer 5] senior unsecured Exchangeable Bond, 23 March 2022, Exhibit 18, CAPR.000032 – Email – RE: [Issuer 5] – S&P Rating Letter, 23 March 2022 and Exhibit 19, CAPR.000044 – Email – FW: [Issuer 5] – S&P Rating Letter, 23 March 2022.
[153] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 1, pp. 24-26.
[154] Exhibit 20, CAPR.000039, 23 March 2022 and Exhibit 21, CAPR.000103 – Email – FW: URGENT / Rating Confirmation Letter for [Issuer 5] senior unsecured Exchangeable Bond, 23 March 2022.
[155] Exhibit 22, CAPR.000036 – Email – RE: URGENT / Rating Confirmation Letter for [Issuer 5] senior unsecured Exchangeable Bond, 23 March 2022. For information on the PSI's employees involved in the release of [Issuer 5] Securities credit ratings, see Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 1, p. 23.
[156] Exhibit 23, CAPR.000040 – Email – RE: [Issuer 5] – S&P Rating Letter, 23 March 2022.
[157] Exhibit 24, CAPR.000060 – [Issuer 5] – RPM Job History, 23 March 2022 and Exhibit 25, CAPR.000043 – Email – CGS, Corporate Ratings: New Final Ratings Action Released to CORE – W-367853, [Issuer 5], France, 23 March 2022.
[158] Exhibit 1, Supervisory Report, 3 January 2022, para. 35.
[159] Exhibit 26, CAPR.000034 – Email – Fwd: [Issuer 5] – S&P Rating Letter, 23 March 2022.
[160] Exhibit 27, CAPR.000037 – Email – RE: [Issuer 5] – S&P Rating Letter, 23 March 2022 and Exhibit 26, CAPR.000034 – Email – Fwd: [Issuer 5] – S&P Rating Letter, 23 March 2022.

to remove the issue credit rating. After all approvals were received, the NID team member submitted an IT request to have the credit rating removed from public view. On 25 May 2021 at 14:29 PM CET, the credit rating was removed from the PSI's website, but remained on CORE. Therefore, it was hidden from the public but remained visible to the PSI's employees[161].

73. On 26 May 2021, at 14:21 PM CET, upon [Issuer 5]'s confirmation that the rating could be made public, the credit rating was reinstated[162]. The PSI informed [Issuer 5] accordingly[163].

74. In the actions outlined above, the PSI failed to follow steps mandated by its own procedures and / or did not document those steps, in whole or in part.

### 2.2.6 [Issuer 6] Securities

75. On 1 September 2021 at 1:41 AM CET, [Issuer 6] contacted the PSI's employee [Redacted due to confidentiality: QR] with a request for an upcoming issue of securities on the Canadian debt capital markets by [Issuer 6], a subsidiary of the parent entity [of Issuer 6][164]. On 3 September 2021 at 2:33 AM CET, [Issuer 6] provided draft issue documents to the analyst[165]. Following discussion between the PSI and [Issuer 6] and internal processes within the PSI[166], on 8 September, [Redacted due to confidentiality: ST] from ROS asked the PSI's Primary Analyst [Redacted due to confidentiality: UV] to confirm that ROS could release the rating[167]. The rating was then released, although the issue had not yet been launched by [Issuer 6]. According to the PSI, this was due to an internal misunderstanding as to when the transaction was being launched[168]. The Rating Letter was sent by ROS to [Issuer 6] on 8 September at 14:25 PM CET [169].

76. On 8 September 2021 at 17:07 PM CET, [Issuer 6] replied to the PSI asking if the letter was meant only for internal records. [UV] from the PSI replied that the rating had been released and asked if it should be removed. At 18:22 PM CET, [Issuer 6] confirmed that the issue had not been launched and requested the removal of the credit rating[170]. Following internal processes, and after the approval of the PSI's Analytical Manager [QR], the credit rating was removed from

[161] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 1, p. 36.
[162] Exhibit 28, CAPR.000033 – Email – RE: INC2392855 & RITM0707403 – HELP + FURTHER STEPS required, 23 March 2022.
[163] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 1, p. 38.
[164] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 42 and Exhibit 29, CAPR.000028 – Email – FW: [Issuer 6] – New Bond, 23 March 2022.
[165] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 42 and Exhibit 30, CAPR.000029 – Email – FW: [Issuer 6] – New Bond, please et up anRPM job., 23 March 2022.
[166] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, pp. 42-46.
[167] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 47 and Exhibit 31, CAPR.000008 – Email – RE: W-372351, [Issuer 6]., rating letter, 23 March 2022.
[168] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 47 and Exhibit 32, CAPR.000022 – Email – FW: S&P Global Ratings Rating Letter – Data change in core W-372351,[Issuer 6], AM & IBCO approval needed., 23 March 2022.
[169] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 48 and Exhibit 33, CAPR.000016 – Email – FW: S&P Global Ratings Rating Letter – updated advanced release letter needed on Monday, 23 March 2022.
[170] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 49 and Exhibit 11, CAPR.000001 – Email – RE: S&P Global Ratings Rating Letter, 23 March 2022.

the PSI's Website, Ratings Direct on CapIQ, and Ratings Direct on SPGMI ("S&P Products") on 8 September at 22:45 PM CET but remained available on CORE[171].

77. Between 24 and 27 September 2021, the issuer contacted the PSI's Primary Analyst [UV] about the launch of the issue, ahead of the closing of the transaction on 28 September[172]. After internal instructions and processes, on 28 September 2021, at 20:51 PM CET, the rating was re-released on S&P Products[173].

78. In the actions outlined above, the PSI failed to follow steps mandated by its own procedures and / or did not document those steps, in whole or in part.

## 2.3 Relevant policies and procedures of the PSI on reporting to ESMA through the ERP

79. ESMA maintains the European Rating Platform ("ERP")[174] website pursuant to its mandate under the Regulation[175]. The rating information on the ERP is collected and published daily. All registered and certified CRAs in the EU that provide credit rating activity and ancillary services must provide their credit rating data to ESMA in a standardised format[176].

80. ESMA uses the Credit Ratings Data Reporting ("RADAR") system to collect the data submitted by CRAs. The system processes the data and performs a quality check on them. Then, a feedback file is sent to the CRA listing errors and warnings[177]. Rejected and invalid records are required to be corrected by CRAs, as CRAs are responsible for the accuracy of their ratings[178].

81. To carry out these tasks, the PSI put in place the GRRG ERP Standard Operating Procedure ("GRRG ERP SOP")[179], which specified the responsibilities of the PSI's daily credit ratings reporting to ESMA[180].

82. Pursuant to the GRRG ERP SOP, the PSI delivers the required data to ESMA daily via an automated process[181]. Under the ordinary operation of this automated process for the submission of files to ESMA, the GRRG ERP SOP indicates that – at 23:00 PM CET (17:00 PM

[171] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 49, Exhibit 34, CAPR.000011 – Email – RE: S&P Global Ratings Rating Letter –Data change in core W-372351,[Issuer 6], AM & IBCO approval needed, 23 March 2022 and Exhibit 35, CAPR.000020 – Email – Re: S&P Global Ratings Rating Letter –Data change in core W-372351,[Issuer 6], AM & IBCO approval needed., 23 March 2022.
[172] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 53 and Exhibit 36, CAPR.000025 – Email – RE: S&P Global Ratings Rating Letter, 23 March 2022.
[173] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 54 and Exhibit 37, CAPR.000003 – Email – RE: RITM0789431 – New assignment for CORRE IT 3rd Lvl Support, 23 March 2022.
[174] Supervisory report, Exhibit 195, Credit Ratings Data Reporting (RADAR) System.pdf.
[175] Exhibit 1, Supervisory Report, 3 January 2022, para. 155.
[176] Exhibit 1, Supervisory Report, 3 January 2022, para. 155.
[177] Exhibit 1, Supervisory Report, 3 January 2022, para. 157.
[178] Exhibit 1, Supervisory Report, 3 January 2022, para. 157.
[179] Supervisory Report, Exhibit 196, GRRG_ERP_SOP.pdf, 3 January 2016.
[180] Exhibit 1, Supervisory Report, 3 January 2022, para. 158.
[181] Exhibit 1, Supervisory Report, 3 January 2022, para. 159. See also Supervisory Report, Exhibit 196, 'GRRG_ERP_SOP.pdf', 3 January 2016, p. 4.

EST) daily – the PSI initiates the process to upload the Ratings and Qualitative files to RADAR[182].

## 2.4 Events related to the reporting of [Issuer 2] credit ratings to the ERP

83. In relation to the [Issuer 2] Securities credit ratings, the PSI identified on 5 June 2019 at 12:29 CET that the credit ratings should not have been publicly disclosed[183].

84. The credit ratings were then removed on 5 June 2019 at 15:37 CET[184] from the PSI's Public Platforms and were re-released on 10 July 2019 at 20:15 CET[185].

85. The PSI nevertheless proceeded with the submission of its initial report to ESMA on 5 June 2019 at 20:58 CET[186] and the initial report on the ERP is dated 25 June 2019, between 5:00 and 5:30 AM CET[187].

86. Finally, the PSI submitted its change report on the ERP[188] on 13 July 2020 between 5:00 and 5:30 CET[189]. Therefore, although the information provided was eventually updated, for 19 days only the initial reporting was visible on the ERP[190].

# 3 Applicable legal provisions

87. References to the Regulation in this Statement of Findings refer to the text of the Regulation (as amended where relevant) in force at all material times in relation to the matters which are the subject of this case.

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[182] Exhibit 1, Supervisory Report, 3 January 2022, para. 162. See also Supervisory Report, Exhibit 196, 'GRRG_ERP_SOP.pdf', 3 January 2016, p. 9.
[183] Exhibit 1, Supervisory Report, 3 January 2022, para. 163, table 9. See also Supervisory Report, Exhibit 89, [Issuer 2] INC0994094.pdf, 12 May 2021.
[184]Exhibit 1, Supervisory Report, 3 January 2022, para. 163, table 9. See also Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[185] Exhibit 1, Supervisory Report, 3 January 2022, para 163, table 9. See also Supervisory Report, Exhibit 204, STPGB_DATRXX_CRA3T_005103_19.xml, 23 July 2021.
[186] Exhibit 1, Supervisory Report, 3 January 2022, para. 163, table 9. See also Supervisory Report, Exhibit 199, STPGB_DATRXX_CRA3T_004987_19.xml, 23 July 2021.
[187] Exhibit 1, Supervisory Report, 3 January 2022, para. 163, table 9. See also Supervisory Report, Exhibit 200, FW SP enforcement case.msg, 6 April 2021.
[188] The PSI disputed the findings with regards to the date and time of submitting the [Issuer 2] files to ESMA and on the change report to the ERP. The PSI claims that the initial report, sent to ESMA on 5 June 2019, "*should have been available*" on the ERP on 6 June 2019. The Board acknowledges that the delay in publishing the initial ERP report was due to a backlog issue on ESMA's RADAR hub (see Exhibit 1, Supervisory Report, 3 January 2022, para. 163, table 9, footnote 415). The PSI also claimed that the change report was submitted to the ERP on 11 July 2019 but did not provide further evidence to support this assertion. Exhibit 51, Reply to the Initial SoF, 2 August 2022, Annex I, para. 134, p. 22.
[189] Exhibit 1, Supervisory Report, 3 January 2022, para. 163, table 9. See also Supervisory Report, Exhibit 200, FW SP enforcement case.pst, 6 April 2021.
[190] Exhibit 1, Supervisory Report, 3 January 2022, para. 164.

## 3.1 Relevant legal provisions regarding the internal control mechanisms

88. Article 6(2) of the Regulation provides that “In order to ensure compliance with paragraph 1, a credit rating agency shall comply with the requirements set out in Sections A and B of Annex I”.

89. Point 3 of Section A of Annex I of the Regulation provides that “A credit rating agency shall establish adequate policies and procedures to ensure compliance with its obligations under this Regulation”.

90. In addition, Point 4 of Section A of Annex I of the Regulation states that: “A credit rating agency shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

    Those internal control mechanisms shall be designed to secure compliance with decisions and procedures at all levels of the credit rating agency.

    A credit rating agency shall implement and maintain decision-making procedures and organisational structures which clearly and in a documented manner specify reporting lines and allocate functions and responsibilities”.

91. Regarding the infringement, point 12 of Section I of Annex III of the Regulation states that: “The credit rating agency infringes Article 6(2), in conjunction with point 4 of Section A of Annex I, by not having sound administrative or accounting procedures, internal control mechanisms, effective procedures for risk assessment, or effective control or safeguard arrangements for information processing systems; or by not implementing or maintaining decision-making procedures or organisational structures as required by that point”.

## 3.2 Relevant legal provisions regarding the disclosure and discontinuation of credit ratings

92. Article 2(1) of the Regulation provides: “This Regulation applies to credit ratings issued by credit rating agencies registered in the Union and which are disclosed publicly or distributed by subscription”.

93. Article 10(1) of the Regulation reads as follows: “A credit rating agency shall 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.

    The first subparagraph shall also apply to credit ratings that are distributed by subscription”.

94. Regarding the infringement, point 5 of Section III of Annex III of the Regulation provides that: “a credit rating agency infringes Article 10(1) by not disclosing on a non-selective basis or in a timely manner a decision to discontinue a credit rating, including full reasons for the decision”.

## 3.3 Relevant legal provisions regarding the reporting to ESMA through the ERP

95. Article 11a(1) of the Regulation reads as follows: “A registered or certified credit rating agency shall, when issuing a credit rating or a rating outlook, submit to ESMA rating information, including the credit rating and rating outlook of the rated instrument, information on the type of credit rating, the type of rating action, and date and hour of publication”.

96. Regarding the infringement, point 4a of Section II of Annex III of the Regulation provides that: “The credit rating agency infringes Article 11a(1) by not making available the required information or by not providing that information in the required format as referred to in that paragraph”.

97. With regards to Commission Delegated Regulation (EU) 2015/2, the following provisions should be taken into consideration:

98. Article 1(2) of Commission Delegated Regulation (EU) 2015/2 provides that: “‘Credit rating agencies shall ensure the accuracy, completeness and availability of the data reported to ESMA and shall ensure that reports are submitted in accordance with Articles 8, 9 and 11 using appropriate systems developed on the basis of technical instructions provided by ESMA”.

99. Article 8(2) of Commission Delegated Regulation (EU) 2015/2 provides that: “Credit ratings and rating outlooks referred to in paragraph 1, issued between 20:00:00 Central European Time (CET) on one day and 19:59:59 CET on the following day shall be reported until 21:59:59 CET on the following day”.

100. Article 13(3) of Commission Delegated Regulation (EU) 2015/2 sets forth that: “Where a credit rating agency identifies factual errors in data that have been reported, it shall correct the relevant data without undue delay according to the technical instructions provided by ESMA”.

# 4 Legal assessment

## 4.1 Findings regarding the internal control infringement

101. This section of the Statement of Findings analyses whether the PSI committed the infringement at Point 12, Section I, Annex III of the Regulation:

> “The credit rating agency infringes Article 6(2), in conjunction with point 4 of Section A of Annex I, by not having sound administrative or accounting procedures, internal control mechanisms, effective procedures for risk assessment, or effective control or safeguard arrangements for information processing systems; or by not implementing or maintaining decision-making procedures or organisational structures as required by that point”.

### 4.1.1 Analysis

102. The issue at stake in this case is whether the PSI has breached its obligation under Article 6(2), in conjunction with Point 4 of Section A of Annex I of the Regulation to have sound administrative or accounting procedures, internal control mechanisms, effective procedures for risk

assessment, or effective control or safeguard arrangements for information processing systems; or by not implementing or maintaining decision-making procedures or organisational structures.

103. As described in more detail in Sections 2.1 and 2.3 above, the PSI had in place a number of procedures governing the release of credit ratings, the withdrawal of credit ratings and their uploading to the ERP.

104. However, as detailed below, the PSI's internal control mechanisms were inadequate in a number of ways.

105. Before examining the specific factual circumstances of the instant case, a detailed examination of the wording and the context of Point 12 of Section I of Annex III of the Regulation, along with Article 6(2) and Point 4 of Section A of Annex I of the Regulation is necessary. Below, that analysis is performed before that covering the facts.

4.1.1.1 Analysis of the relevant provisions of the Regulation

106. Article 6 of the Regulation, entitled "Independence and avoidance of conflicts of interest", provides:

"1. A credit rating agency shall take all necessary steps to ensure that the issuing of a credit rating or a rating outlook is not affected by any existing or potential conflicts of interest or business relationship involving the credit rating agency issuing the credit rating or the rating outlook, its shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the credit rating agency, or any person directly or indirectly linked to it by control.

2. In order to ensure compliance with paragraph 1, a credit rating agency shall comply with the requirements set out in Sections A and B of Annex I."

107. Annex I, Section A, Point 4 of the Regulation provides:

"A credit rating agency shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

Those internal control mechanisms shall be designed to secure compliance with decisions and procedures at all levels of the credit rating agency.

A credit rating agency shall implement and maintain decision-making procedures and organisational structures which clearly and in a documented manner specify reporting lines and allocate functions and responsibilities."

108. Annex III, Section 1, Point 12 of the Regulation provides:

"The credit rating agency infringes Article 6(2), in conjunction with point 4 of Section A of Annex I, by not having sound administrative or accounting procedures, internal control mechanisms, effective procedures for risk assessment, or effective control or safeguard arrangements for

information processing systems; or by not implementing or maintaining decision-making procedures or organisational structures as required by that point."

109. Annex I, Section A, Point 4 of the Regulation therefore sets out the organisational requirements imposed on CRAs, and requires that a CRA's internal control mechanisms shall be designed to secure compliance with decisions and procedures at all levels of the credit rating agency.

110. As noted above, Article 6 of the Regulation is entitled "Independence and avoidance of conflicts of interest". This may lead one to the conclusion that the procedures and mechanisms that are referred to in Annex III, Section 1, Point 12 of the Regulation are only those which seek to avoid conflicts of interest or mitigate their harmful effects. In the case at hand, there is no evidence of any conflicts of interest.

111. However, it is clear from the relevant jurisprudence that, when interpreting a provision of EU law, aside from the wording of the provision itself, one must consider the context in which it occurs and the objectives pursued by the rules of which it is a part[191]. One consequence of this approach is that one must adopt a teleological approach to the interpretation of provisions: once a provision's purpose is identified, its detailed terms will be interpreted so as to ensure that the provision in question retains its effectiveness.[192]

112. The PSI contested the application of the cited case law in the context of this case.[193] However, further to a careful review of the PSI's arguments and the relevant case law, the Board finds that despite some factual differences in the cases, the principles developed in the case law are nevertheless applicable to the current case. Thus, the requirement for a CRA to have sound internal controls must be interpreted by considering the context of the relevant provisions and the objectives pursued by the requirement and the Regulation as a whole.

113. It is plain that the general aims and objectives of the Regulation, as well as the broad scope of the provisions in Annex I, Section A, go beyond the avoidance of conflicts of interest. Following the general logic and purpose of the Regulation, therefore, the requirements listed in Annex I, Section A cannot be construed as serving exclusively to prevent conflicts of interest. Organisational requirements imposed on CRAs by the Regulation must be interpreted as serving the overarching goals of the Regulation itself, and particularly the improvement of investor confidence and the protection of consumers. This intended purpose of the Regulation is evidenced in Recitals (1) and (2) and Article 1 of the Regulation.

114. Recital (1) provides:

"Credit rating agencies play an important role in global securities and banking markets, as their credit ratings are used by investors, borrowers, issuers and governments as part of making informed investment and financing decisions. Credit institutions, investment firms, insurance undertakings, assurance undertakings, reinsurance undertakings, undertakings for collective investment in transferable securities (UCITS) and institutions for occupational retirement provision may use those credit ratings as the reference for the calculation of their capital

[191] Case C-533/08 *TNT Express Nederland* [2010] ECR I-4107, paragraph 44 and the case-law cited.
[192] See, for example, Case C-439/08 *VEBIC*, paragraph 61.
[193] See PSI's written submissions in response to the Board's initial Statement of Findings, para. 23.

requirements for solvency purposes or for calculating risks in their investment activity. Consequently, credit ratings have a significant impact on the operation of the markets and on the trust and confidence of investors and consumers. It is essential, therefore, that credit rating activities are conducted in accordance with the principles of integrity, transparency, responsibility and good governance in order to ensure that resulting credit ratings used in the Community are independent, objective and of adequate quality."

115. Recital (2) provides in part:

"It is … important to lay down rules ensuring that all credit ratings issued by the credit rating agencies registered in the Community are of adequate quality and issued by credit rating agencies subject to stringent requirements …"

116. The broad goal of the Regulation is set out in Article 1 (emphasis added):

"This Regulation introduces a common regulatory approach in order to enhance the integrity, transparency, responsibility, good governance and independence of credit rating activities, contributing to the quality of credit ratings issued in the Union and to the smooth functioning of the internal market, while achieving a high level of consumer and investor protection. **It lays down conditions for the issuing of credit ratings and rules on the organisation and conduct of credit rating agencies, including their shareholders and members, to promote credit rating agencies' independence, the avoidance of conflicts of interest, and the enhancement of consumer and investor protection.**"

117. A broader interpretation must also take into account Recital (26) of the Regulation (emphasis added):

"**Credit rating agencies should establish appropriate internal policies and procedures in relation to employees and other persons involved in the credit rating process in order to** prevent, identify, eliminate or manage and disclose any conflicts of interest and **ensure at all times the quality, integrity and thoroughness of the credit rating and review process**. Such policies and procedures should, in particular, include the internal control mechanisms and compliance function."

118. The context of Annex I is also instructive: it is headed "Independence and avoidance of conflicts of interest'. Section A, which is headed "Organisational requirements", lists 10 organisational requirements. Certain of these organisational requirements are expressly aimed at ensuring the CRA's independence and preventing conflicts of interest: see points 1(a) and (b); point 2(1); point 7. However, importantly for present purposes, other provisions in Section A impose broader requirements, as is clear from: point 1(c) requiring that the CRA "complies with the remaining requirements of this Regulation"; points 2(2), 2(5), 2(6), points 3 and 4 (sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems); points 5 and 6 (compliance function department); point 8 (continuity and regularity in performance of credit rating activities); point 9 (review of methodologies, ensuring accuracy); and point 10 (system and internal control monitoring).

119. Finally, it is notable that the internal heading of Annex III, Section I, is "Infringements related to conflicts of interest, organisational or operational requirements"; the infringement set out in Annex III, Section I, point 12 is listed under that broader heading.

120. Therefore, the co-legislators expressly made a link between the internal policies and procedures of a CRA, including its internal control mechanisms, the independence of a CRA and the broader objective of ensuring the quality and thoroughness of credit ratings.

121. The scope of application of the Regulation, insofar as it imposes obligations upon a CRA, thus aims at improving investor confidence and protecting consumers where there is or might arise a conflict of interest, but also has a broader remit. In particular, besides the objective to have credit ratings issued by CRAs that meet a necessary level of quality and thoroughness, this broader remit results from the emphasis in the Regulation upon the need for a CRA to maintain a certain standard of organisational requirements.

122. It should be noted that this broad interpretation of the relevant provisions mirrors ESMA practice to date. By way of example, already in its 2014 Decision concerning Standard & Poor's[194] and its 2015 Decision concerning DBRS[195], the Board found that the respective CRAs had infringed Point 12 in circumstances where those infringements did not relate to a conflict of interest or a lack of independence. This broad approach has also been endorsed by the Joint Board of Appeal of the European Supervisory Authorities, which assessed the compliance with the Internal Control Requirement by an applicant for registration as a CRA without making a link with conflicts of interest or a lack of independence, stating to the contrary that "internal control mechanisms are a necessary part of good governance".[196]

123. In short, the provisions of the Regulation setting out organisational requirements, by their very nature, must be deemed to serve the whole range of objectives pursued by the Regulation.

124. Further, as noted at Article 10(1) of the Regulation, timely disclosures of credit ratings are crucial: "A credit rating agency shall disclose any credit rating or rating outlook, as well as any decision to discontinue a credit rating, on a nonselective basis and **in a timely manner**" (emphasis added). The concept of "timely manner" is not defined in the Regulation for the purpose of Article 10(1). However, considering the ordinary meaning[197] of the word "timely", it can be considered as meaning a "prompt", but also "adequate" timing. As such, a disclosure occurring prematurely cannot be considered as occurring at an adequate timing and is therefore not performed in a timely manner.

125. The PSI disputes the legal assessment set out above: "The IIO's interpretation is problematic as it disregards the clear purpose of the provision on the basis that a different interpretation

[194] ESMA press release "ESMA censures Standard & Poor's for internal control failings", 3 June 2014, document ESMA/2014/596, available at https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-596_esma_censures_standard_u_poors_for_internal_control_failings.pdf.
[195] ESMA press release "ESMA fines DBRS Ratings Ltd. for internal control failings", 29 June 2015, document ESMA/2015/1050, available at https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1050_esma_fines_dbrs_for_internal_control_failings.pdf.
[196] Board of Appeal (BoA) Decision of 10 January 2014: *Global Private Rating Company v ESMA*, paragraphs 125 to 132, available at https://www.esma.europa.eu/sites/default/files/library/2015/11/boa_2013-14_board_of_appeal_-_decision_on_appeal_gprc_v_esma_-_10_january_2014_-_rectified_0.pdf.
[197] Exhibit 41, TIMELY _ Meaning in the Cambridge English Dictionary, 16 June 2022.

might be more consistent with certain broader, overarching notions of the CRA Regulation. This interpretation would result in an overly strained interpretation of the natural meaning of the provision and would hinder credit ratings agencies' abilities to interpret and apply it consistently. This would be counterproductive to achieving the CRA Regulation's aims."[198] However, as set out above, the Board agrees with the IIO's interpretation of the relevant provisions, which is consistent with the broad aims of the Regulation as set out in Recital (26), for example. The narrow interpretation proposed by the PSI would bar ESMA from sanctioning deficient internal controls in credit rating agencies, unless those controls related to conflicts of interest, leaving the provision ineffective in enforcing the Regulation's aims, as set out above.

126. To conclude this part of the analysis, the internal controls and procedural requirements imposed on CRAs extend beyond independence or conflicts of interest and prompt an assessment of the overall soundness of internal controls and procedures adopted to ensure compliance with all of its obligations under the Regulation. In particular, a CRA shall have sound administrative and accounting procedures and internal control mechanisms which are able to prevent the non-timely disclosure of credit ratings.

#### 4.1.1.2 Application to the instant case

127. The PSI can commit this infringement by putting in place a framework (policies, procedures and guidance documents) which is not capable of achieving its purpose, i.e., of identifying and preventing non-compliant conduct; or by failing to implement the framework effectively and efficiently.

128. In the instant case, internal controls (if properly established, maintained and implemented) should have prevented premature disclosures of credit ratings and ensured in cases where there were premature disclosures that remedial action was taken in line with the PSI's regulatory obligations.

129. It is relevant to note in this context that the documenting of steps is crucial to allow all relevant persons to know and understand the checks performed, the results of these checks and any flaws discovered that should be addressed. These obligations are discussed further below.

130. The Board finds that there are three principal ways in which the PSI did not comply with its obligations regarding the internal control mechanisms. First, the procedures and guidance documents themselves were flawed in their design, as in certain regards they were not capable of achieving their purpose, i.e., of identifying and preventing non-compliant conduct related to premature disclosures and their consequences. Second, the relevant procedures were not implemented properly. Third, the compliance checks in the framework were inadequate and the Compliance function was not sufficiently involved in the implementation of internal control procedures. Each shortcoming is dealt with in turn below.

[198] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 20.3. See also PSI's written submissions in response to the Board's initial Statement of Findings, para. 22.

Flaws in the procedures

131. As noted in Section 2.1, there were a number of procedures which were relevant for the disclosure of the credit ratings, their removal and reinstatement. There were several flaws inherent in the procedures themselves. First, as regards the issue of timing in the RPM process, there was no evidence either in the RPM workflow narrative document[199] or in the STM Guide[200], which the PSI provided in support of its narrative document, of any controls regarding obtaining clear instructions from an issuer as to the timing of a credit rating release. Second, in the case of the credit ratings for [Issuer 1] Securities, where the credit ratings removal process entailed the addition of a confidential flag, the Escalation Manual (12 November 2018 and 30 March 2020 versions[201]) did not indicate a specific credit ratings reinstatement process (with clear allocated tasks and checks and controls) whereby the confidential flag would be removed to make the credit ratings visible again. Third, until it was updated, the Issue Request Template in the NID process did not contain a section (with clear allocated tasks and checks and controls) on ratings releases and timing.

132. Further, as noted at Section 2.3, there was an automated process for the submission of ratings to the ERP: the GRRG ERP SOP[202] specified the responsibilities of the PSI's daily credit ratings reporting to ESMA[203]; and pursuant to the GRRG ERP SOP, the PSI delivered the required data to ESMA daily via an automated process[204]. However, this process did not incorporate checks to ensure the accuracy of the reporting to the ERP, with the result that in one instance the ratings for [Issuer 2] as displayed on the ERP were incorrect for 19 days. This is evidence of a flaw in the ERP submission procedures themselves.

133. The PSI stated that it did not agree with the assertion "that there was no evidence of "any controls regarding obtaining clear instructions from an issuer as to the timing of a credit rating release" in the RPM workflow or STM Guide. As noted in step 1 of Workflow 21 there is "interaction between the issuer and a Commercial employee to engage in credit rating activities". Further, steps 2 and 3 pertain to both scheduling a committee and drafting a Job Initiation Template. These steps would, by necessity, involve the discussion of when the rating is to be released."[205] The point remains, however, that "interaction" does not necessarily mean that the timing of the release will be discussed and clearly agreed. Furthermore, the steps identified by the PSI do not provide for a safeguard against the premature release of credit ratings, as the ratings were still released prematurely. Those safeguards were only introduced when changes were made by the PSI, as detailed: see, for example, "the Issue Request Template was updated with a dedicated section on ratings releases and timing, and another section related to Rating Letters, to clarify the NID process". Such specific safeguards were absent prior to the second half of 2021.

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[199] Supervisory Report, Exhibit 47, 'RPM Workflow Steps_Final.xlsx'.
[200] Supervisory Report, Exhibit 133, 'Guide_STM In EMEA.pdf'.
[201] Exhibit 1, Supervisory Report, 3 January 2022, para. 79, Supervisory Report, Exhibit 125, Operations & Technology S&P.com Product Escalations v3.3.20.pdf, 12 May 2021 and Supervisory Report, Exhibit 126, D&O Product_S&P.com Escalations (3450_2).pdf, 23 July 2021.
[202] Supervisory Report, Exhibit 196, GRRG_ERP_SOP.pdf, 3 January 2016.
[203] Exhibit 1, Supervisory Report, 3 January 2022, para. 158.
[204] Exhibit 1, Supervisory Report, 3 January 2022, para. 159. See also Supervisory Report, Exhibit 196, 'GRRG_ERP_SOP.pdf', 3 January 2016, p. 4.
[205] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 21.2.

134. The PSI also took issue with the assessment of the GRRG ERP SOP, stating that "the reporting to the ERP in relation to the Releases was accurate. In any event, S&P considers that it is incorrect to make such a sweeping statement as it is clear there are various controls built into the GRRG ERP SOP process to ensure the accuracy of information, such as quality assurance checks and IT testing."[206] The fact remains that the initial reporting to the ERP was not accurate, as it was premature.

Flaws in implementation

135. In addition to the design flaws noted above, the evidence shows a very large number of shortcomings in the implementation of the PSI's relevant procedures governing the release, removal and re-release of the PSI's ratings.

136. Regarding **[Issuer 1] Securities**, a number of steps in the RPM Workflow Narrative Document were not performed or were only performed in part: most notably steps 2, 4, 5, 6, 11, 14, 16 and 18. As regards the removal of the [Issuer 1] rating from Public Platforms, there is no evidence of the complete performance of steps 4 and 5 of section 2.6 of the Escalation Manual[207], or the evidence is of only partial and/or uncertain performance of those steps[208]. In the context of the re-release of those same ratings[209], the performance of step 2 of Section 2.2 of the Escalation Manual did not appear to be complete. Further, there was no evidence of any confirmation from the ROS team that the rating appeared on S&P Products.

137. Regarding **[Issuer 2] Securities**, several steps in the NID Workflow Narrative Document were not performed or were only performed in part[210]: namely steps 7, 9 and 10. In addition, there was no evidence of the performance of steps 2, 3, 4, 5, 6, 11, 12, 13, 15, 17, 18, 19 and 21 of the NID Workflow Narrative Document. As to the removal of those ratings, the evidence shows that a number of steps at Section 2.2 of the Escalation Manual[211] were not performed or were only performed in part [212], namely steps 2, 3 and 5. In addition, there was no evidence of the performance of steps 1, 6 and 7 of Section 2.2 of the Escalation Manual. In the context of the reinstatement of [Issuer 2] Securities[213] credit ratings, there is no evidence of the complete performance of step 2 of Section 2.2 of the Escalation Manual.

138. Regarding **[Issuer 3] Securities**, several steps in the NID Workflow Narrative Document were not performed or were only performed in part[214], most notably steps 7, 9, 10 and 19. In addition, there was no evidence of the performance of steps 2, 3, 4, 5, 6, 11, 12, 13, 15, 17, 18, and 21 of the NID Workflow Narrative Document.

139. Regarding **[Issuer 4] Securities**, a number of steps in the NID Workflow Narrative Document were not performed or were only performed in part[215], namely steps 7, 9, 10, and 19. In addition,

[206] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 21.3.
[207] Supervisory Report, Exhibit 126, D&O Product_S&P.com Escalations (3450_2).pdf, 23 July 2021, pp. 7-8.
[208] Exhibit 1, Supervisory Report, 3 January 2022, para. 88, Table 3, pp. 27-29.
[209] Exhibit 1, Supervisory Report, 3 January 2022, para. 94, Table 7, pp. 40-43.
[210] Exhibit 1, Supervisory Report, 3 January 2022, para. 94, Table 5, pp. 31-36.
[211] Supervisory Report, Exhibit 126, D&O Product_S&P.com Escalations (3450_2).pdf, 23 July 2021, pp. 7-8.
[212] Exhibit 1, Supervisory Report, 3 January 2022, para. 94, Table 5, pp. 31-36.
[213] Exhibit 1, Supervisory Report, 3 January 2022, para. 94, Table 7, pp. 40-43.
[214] Exhibit 1, Supervisory Report, 3 January 2022, para. 94, Table 5, pp. 31-36.
[215] Exhibit 1, Supervisory Report, 3 January 2022, Table 5, pp. 31-36.

there was no evidence of the performance of steps 2, 3, 4, 5, 6, 11, 12, 13, 15, 17, 18, and 21 of the NID Workflow Narrative Document. As to the removal of those ratings, several steps required by the Escalation Manual[216] were not performed or were only performed in part[217], namely steps 3 and 5. In respect to steps 1, and 6 of the Escalation Manual, there is no evidence of the performance of these steps. In the context of the reinstatement of [Issuer 4] Securities credit ratings[218], there is no evidence of the complete performance of steps 1 and 2 of the Escalation Manual.

140. Regarding **[Issuer 5] Securities**, step 1 of the NID ratings release process does not appear to have been properly followed. Further, step 11 of the NID ratings release process, which requires, where relevant, the creation of the Rating Letter simultaneously with the FTP process (eFeeds Template macro), was only performed in part[219]. In addition, there was no evidence of the performance of steps 2, 3, 12, 13, 17 and 21 of the NID Workflow Narrative Document[220]. As to the removal of [Issuer 5] Securities credit ratings, there was no evidence of the performance of steps 4, 5, 7 and 8 of Section 2.2 of the Escalation Manual[221].

141. Regarding **[Issuer 6]**, step 12 of the RPM ratings release process was only performed in part[222]. As to the removal of [Issuer 6] Securities credit ratings, in respect to steps 3, 4 and 6 of Section 2.6 of the Escalation Manual, there was no evidence of the performance of these steps[223].

142. It is clear from the foregoing that the PSI failed to implement properly its own procedures governing the release, removal and re-release of credit ratings. These shortcomings are strong evidence of failings in the PSI's internal control mechanisms which lasted over a period of over two years (from June 2019 to September 2021) and concerned six different securities. These failings were not minor: taken together, they resulted in non-timely releases of credit ratings and other incidents contrary to the PSI's obligations under the Regulation.

143. The PSI disagreed with the assessment of the RPM workflow and argued that several steps were undocumented as "some steps will naturally not produce or warrant such documentary evidence"[224]. According to the PSI, if these undocumented steps were not taken, the ones that were documented would not have been performed. The PSI also claimed that these failings were inconsequential as "they had no impact on the substance or timing of the releases"[225].

144. As to the assertion that certain steps do not require or warrant documentary evidence, the Board takes the view that, in principle, it is important that all steps in the relevant procedures be documented, or at the very least be visible as part of an audit trail.

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[216] Supervisory Report, Exhibit 125, Operations & Technology S&P.com Product Escalations v3.3.20.pdf, 12 May 2021.
[217] Exhibit 1, Supervisory Report, 3 January 2022, Table 6, pp. 35-39.
[218] Exhibit 1, Supervisory Report, 3 January 2022, para. 94, Table 7, pp. 40-43.
[219] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 1, pp. 24-33.
[220] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 1, pp. 24-33.
[221] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 1, pp. 34-37.
[222] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, pp. 42-48.
[223] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, pp. 49-52.
[224] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 22.4.
[225] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 22.6.

145. In this context, it is worth recalling that record-keeping is an integral part of a CRA's duties under the Regulation. Article 6(2) set out a CRA's obligation to comply with the requirements set out, among others, in Section B of Annex I.

146. Point 7 of Section B of Annex I, meanwhile, sets out the organisational requirement to arrange for adequate records and, where appropriate, audit trails of the CRA's credit rating activities to be kept, expressly including, among others, "(d) the records documenting the established procedures and rating methodologies used by the CRA to determine credit ratings and rating outlooks … (g) records of the procedures and measures implemented by the CRA to comply with the CRA Regulation, and (h) copies of internal and external communications, including electronic communications, received and sent by the CRA and its employees, that relate to credit rating activities". Point 8 of Section B of Annex I of the Regulation also sets out the requirement to keep records and audit trails referred to in Point 7 of the same Section at the premises of the registered CRA for at least five years and make them available upon request to ESMA.

147. These obligations were deemed sufficiently important by the co-legislators to make a failure to meet them an infringement under Annex III, Section II, points 1 and 2 of the Regulation.

148. A failure to record steps in procedures cannot lead to the conclusion that the PSI had adequate internal controls.

149. Based on the analysis of the evidence in the case, the Board concludes that the PSI's internal control system was not sufficient to ensure compliance with its obligations under the relevant legislation. Many steps were not performed, and once the failings are taken together, it is clear that these were not inconsequential. The Board finds that there is strong evidence of a failure to implement robust internal control procedures.

Compliance failings

150. In the instant case, the compliance checks in the relevant framework were inadequate and the Compliance function was not sufficiently involved in the implementation of the PSI's internal control mechanisms which are relevant for the publication of the credit ratings, their removal and reinstatement.

151. Of the premature releases detailed above, the [Issuer 2] release was the first in time (June 2019). It was followed by the [Issuer 1] release (September 2019), [Issuer 3] (March 2020), [Issuer 4] (June 2020), [Issuer 5] (May 2021) and [Issuer 6] (September 2021). As regards the notification of the Compliance function about premature releases, in relation to half of the credit ratings that are the subject of this case, the PSI's Compliance function was not made aware of the premature releases.

152. In this respect, the PSI stated: "The [Issuer 1] rating was immediately escalated to Compliance and subsequently Legal as the analyst sought advice about how to remove the rating from publication … Legal and Compliance were not involved in discussions about the removal of the

[Issuer 2], [Issuer 3] and [Issuer 4] ratings as they were not aware of these releases at the time. In the cases of [Issuer 5] and [Issuer 6], Compliance was informed."[226]

153. In particular, the PSI stated that "the [Issuer 1] Release was made in reliance on a waiver … and so was not considered to be an internal controls issue"[227], despite the occurrence of a premature release. The "[Issuer 2], [Issuer 3] and [Issuer 4] Releases were conducted in accordance with an exceptions process and therefore not escalated to Legal and Compliance" [228]. More precisely, the releases related to the [Issuer 2], [Issuer 3] and [Issuer 4] issuances occurred because of internal misunderstandings and miscommunication[229]. On the PSI's account, individuals involved in the publication of the releases did not consider these to be potential errors and therefore did not escalate them to Compliance. The PSI acknowledged "that the decision of the relevant individuals not to escalate the [Issuer 2], [Issuer 3] and/or [Issuer 4] Releases to Compliance as potential errors under the Error Correction SOP is unfortunate as, had they been escalated, S&P's Compliance function would have assessed whether there was a need for enhancements to internal controls in this context, significantly sooner."[230] Concerning the [Issuer 5] and [Issuer 6] releases, the PSI asserted that both the releases were escalated to Compliance, proving that its "processes for dealing with premature releases … were effective and robust"[231].

154. The PSI provided further details about the failure to inform Internal Audit, Legal and Compliance of the removal, re-release and publication of the ratings for [Issuer 2], [Issuer 3] and [Issuer 4]: "Prior to May 2021, the Risk and Internal Control Function was not informed of the [Issuer 2], [Issuer 3], [Issuer 4] and [Issuer 1] releases … these events were not determined to be errors, as defined by the Error Correction SOP, so were not escalated. In April and May 2021, EMEA Compliance clarified to analysts, via analytical huddles, that premature releases should be escalated as potential errors. In May 2021, the premature release was escalated by EMEA Compliance to the Internal Control Function. The [Issuer 6] rating was also escalated on 8 September 2021 to IBC and Compliance and escalated to the Internal Control Function thereafter."[232]

155. In addition, the PSI provided further detail about efforts to remedy the issues that led to the premature releases following the clarifications of April and May 2021 that premature releases should be escalated as potential errors to Compliance: "This led to the escalation and further consideration of the premature releases and the underlying processes … This led to a number of enhancements: In October 2021, changes were made to the Escalations Manual to introduce: A requirement to inform Compliance and the IBC group of premature releases (paragraph 2.2(i)(g) and 2.2(4)(g)); and A requirement to obtain Analytical Manager approval to suppress and re-release a credit rating (paragraphs 2.2(i)(d) and 2.2(4)(d)). Also in October 2021, the Issue Request Template was updated with a dedicated section on ratings releases and timing, and another section related to Rating Letters, to clarify the NID process. In November 2021, the CWG met to consider the risks related to premature releases. … The CWG did, however, agree

[226] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, pp. 6-7.
[227] See PSI's written submissions in response to the Board's initial Statement of Findings, para. 26.
[228] See PSI's written submissions in response to the Board's initial Statement of Findings, para. 26.
[229] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 17.1.
[230] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 17.4.
[231] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 18.3.
[232] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, p. 6.

to, and implement, the following actions: In November 2021, the NID was reminded to confirm rating release instructions with the relevant analyst; In November 2021, Compliance reminded the analyst teams to clarify the release date with issuers before releasing credit ratings; and From November 2021, ongoing monitoring of premature releases of credit ratings by IBC is being conducted."[233]

156. It is clear from the foregoing that Compliance was notified about the premature release of the [Issuer 1] rating in September 2019 but did not take any substantive follow-up action. By this point, the premature release of the [Issuer 2] rating had already occurred some three months previously. The [Issuer 3] and [Issuer 4] releases then occurred in March and June of 2020. Further, ESMA Supervisors corresponded with the PSI in June and July 2020 about the premature release of the [Issuer 1] rating.[234] This was followed by a Request for Information in April 2021.[235] However, notwithstanding the foregoing, the PSI's Compliance function was only involved in addressing the issue from April 2021, some 22 months after the first premature release. Following the involvement of Compliance, several substantive changes were introduced to reduce the likelihood of premature releases, as detailed above.

157. In this context, it is worth recalling that the PSI stated that "… both the RPM and NID processes are subject to comprehensive internal policies and controls, which set out the conditions of use, the steps to be followed and control measures to manage risk. Oversight and monitoring of the adequacy and effectiveness of these controls is provided through [the PSI's] internal control structure. This includes a quarterly review process across [the PSI], coordinated by the Risk and Internal Control Function, to identify potential deficiencies in the internal control structure and areas for control improvement. Following each quarterly review, the Controls Working Group … holds a follow up meeting to review the identified control issues and make a final determination of whether a deficiency existed in the internal control structure."[236]

158. As to the fact that the premature release issue was only escalated to the Controls Working Group in November 2021, the PSI asserted that "The presentation of the issue to the CWG in November 2021 represented the culmination of remediation work over a period of time leading up to that point. During the period from June and October 2021, several meetings were held, and emails exchanged between IBC, Compliance and the Risk and Internal Control Function to evaluate the issue."[237]

159. It is notable from the foregoing that no justification is given by the PSI for the fact that before June 2021, the quarterly review process failed to engender any changes, despite the fact that five releases of ratings were issued prematurely over the course of just under two years (from [Issuer 2] in June 2019 to [Issuer 5] in May 2021). The Board finds that this is indicative of a serious failure to involve Compliance in addressing the deficiencies identified in the PSI's internal control mechanisms.

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[233] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, pp. 20-21.
[234] Exhibit 1, Supervisory Report, 3 January 2022, para. 26.
[235] Exhibit 1, Supervisory Report, 3 January 2022, para. 29.
[236] Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022, para. 6.
[237] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 33, p. 18.

160. In this respect, the PSI notes that "[i]t is unreasonable to characterise the fact that Compliance did not learn about the three releases until 2021 as a serious failing. … Compliance has to take a proportionate risk-based approach to ensuring compliance with S&P's internal controls, and in managing and monitoring issues. This approach is driven by identified risks. It is not reasonable to determine, based on the facts known to Compliance at the time, that Compliance should have identified a broader risk regarding premature releases, and that it should have assessed the need for further internal controls on that basis … the suggestion … that Compliance should have identified the risk of premature releases following the [Issuer 1] release, which had been escalated to Compliance, is not accepted."[238] However, without taking a position on the question of a risk-based approach to compliance, it remains the case that, once alerted to the premature release of the [Issuer 1] rating in September 2019 Compliance did not do anything of substance in response to what appeared to be a failure to ensure that a credit rating was published in a timely manner. At the very least, Compliance could have sought at that point to ensure that any future untimely releases should be brought to its attention; in the event, it did not do so, and future premature releases were not escalated. The PSI sought to explain this apparent failing by pointing to a misunderstanding with the issuer[239], rather than addressing the fact that, at that moment, its internal controls were not sufficiently robust to ensure that ratings were published at the correct time.

161. Contrary to the PSI's assertions, the Board finds that the PSI did not have an effective and robust process to deal with premature releases. Concerning [Issuer 2], [Issuer 3] and [Issuer 4], matters were not escalated to Compliance. In the case of [Issuer 5] and [Issuer 6], even if the escalation to Compliance took place, that action is not sufficient of itself to prove the effectiveness of the PSI's internal procedures. The premature releases still occurred and escalation should have happened in every instance; this goes beyond the "unfortunate" [240] and serves to show that the PSI's procedures were inadequate in this respect. The fact that the changes made by the PSI in 2021 included a recommendation that instances of premature release should be escalated as potential errors to Compliance shows that premature releases of ratings were always errors worthy of escalation to Compliance and that the PSI in 2021 acknowledged the need to do so. Further, the Board considers the broader point as outlined above to remain valid: the fact that Compliance was not involved in a substantive way earlier than 2021 is itself indicative of shortcomings in the PSI's internal controls.

162. Finally, the PSI considered that "the Releases were extremely rare, standalone events that took place in the context of thousands of correctly timed and executed releases" [241],"demonstrating that there was no systemic issue with S&P's internal control mechanisms."[242] The PSI notably indicated the following: "[Issuer 4], [Issuer 3], [Issuer 2] and [Issuer 5] were released through the NID. Between 2019 and 2021 (the period when the premature releases occurred), the NID published a total of 10,524 credit ratings in EMEA. Therefore, the premature releases represent less than 0.05% of the total number of credit ratings released by S&P during the period in question. [Issuer 1] and [Issuer 6] were released through the RPM process. During 2019 to

[238] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 23.3 to 23.4.
[239] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 23.4.
[240] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 17.4.
[241] See PSI's written submissions in response to the Board's initial Statement of Findings, para. 23.
[242] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 19.5.

2021, 9,494 credit ratings were published through the RPM process in EMEA, and the [Issuer 1] and [Issuer 6] releases were the only premature releases identified (0.02% of the total)."[243]

163. The Board conversely considers the release of credit ratings prematurely (before an instrument is even issued) to be a serious failure, independent of the frequency of this happening. E Especially as premature releases could have a possible impact on the financial markets. Furthermore, in the past, as early as 2014, when considering internal control failures, the Board has already established such a finding in instances where there was only one instance of failure.[244]

164. Further, the Regulation takes proportionality into account by providing aggravating and mitigating factors in relation to the repetition and duration of failures, as well as whether infringements reveal systemic failures.

165. In this instance, the infringement showed a weakness in the internal control mechanisms of the PSI but did not reveal any overarching systemic weaknesses in its organisation. In analysing the aggravating factor, the Board took into account the type of failure in the PSI's internal controls, and its level of seriousness. The Board considers that there is no evidence that the PSI's procedures in general and the PSI's wider system of internal controls, which the PSI uses to comply with the other obligations under the Regulation which are not the subject of this case, have systemic weaknesses. The Board thus did not apply the aggravating factor provided for in Annex IV, Point I. 3 in this regard.

#### 4.1.1.3 Conclusion

166. For the reasons set out above, the Board, in agreement with the IIO, finds that the PSI failed to have internal control mechanisms which ensure compliance with the PSI's obligations under the Regulation regarding the timely disclosure of ratings. This constitutes the infringement at Point 12, Section I, Annex III of the Regulation.

### 4.1.2 Intent or negligence

167. Article 36a(1) of the Regulation provides:

"Where, in accordance with Article 23e(5), ESMA's Board of Supervisors finds that a credit rating agency has, intentionally or negligently, committed one of the infringements listed in Annex III, it shall adopt a decision imposing a fine in accordance with paragraph 2".

"An infringement by a credit rating agency shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that the credit rating agency or its senior management acted deliberately to commit the infringement".

[243] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 8, p. 5.
[244] ESMA press release "ESMA censures Standard & Poor's for internal control failings", 3 June 2014, document ESMA/2014/596, available at https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-596_esma_censures_standard_u_poors_for_internal_control_failings.pdf.

168. In accordance with Article 36a(1) of the Regulation, a finding that an infringement has been committed by a CRA with intention or negligence will lead to the imposition of a fine. Consequently, the Board needs to conclude whether the evidence pertaining to the present case shows that the relevant infringement has been committed by the PSI intentionally or negligently.

169. In accordance with Article 36a(1) of the Regulation, a finding that an infringement has been committed intentionally requires a finding of "objective factors which demonstrate that the credit rating agency or its senior management acted deliberately to commit the infringement".

170. The factual background as set out in this Statement of Findings does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

171. It should therefore be assessed whether the PSI acted with negligence.

4.1.2.1 Preliminary remarks regarding negligence

172. The Regulation provides no explicit guidance as regards the concept of "negligence". However, it follows from the provisions of Articles 24 and 36a of the Regulation that the term "negligence" as referred to in the Regulation requires more than a determination that there has been the commission of an infringement.

173. Further, it is clear from the second subparagraph of Article 36a(1) of the Regulation that a negligent infringement is not one which was committed deliberately or intentionally. This position is further supported by the case-law of the CJEU which ruled that negligence may be understood as entailing an unintentional act or omission[245].

174. In addition, "negligence" in the context of the Regulation is an EU law concept – albeit one which is familiar to and an inherent part of the 27 Member States' legal systems – which must be given an autonomous, uniform interpretation.

175. Taking into account the CJEU jurisprudence[246], the concept of a negligent infringement of the Regulation is to be understood to denote a lack of care on the part of a CRA when it fails to comply with this Regulation.

176. Based on this, the Board considers negligence to be established in circumstances where the CRA, as a professional firm in the financial services sector subject to stringent regulatory requirements, is required to take special care in assessing the risks that its acts or omissions entail, and has failed to take that care; and as result of that failure, the CRA has not foreseen the consequences of its acts or omissions, including particularly its infringement of the

[245] See for instance Case C-308/06, *International Association of Independent Tanker Owners (Intertanko) and Others v Secretary of State for Transport* [2008] ECR I- 4057, where the CJEU noted at para. 75 of its judgment that all of the Member States' legal systems "*have recourse to the concept of negligence which refers to an unintentional act or omission by which the person responsible breaches his duty of care*."
[246] See for instance Case C-48/98, *Firma Söhl & Söhlke v Hauptzollamt Bremen* [1999] ECR I-7877, para. 58; Case C-64/89, *Deutscher Fernsprecher* [1990] ECR 1-2535, para. 19.

Regulation, in circumstances where a person in such a position who is normally informed and sufficiently attentive could not have failed to foresee those consequences.

177. The following points should be taken into consideration regarding the standard of care to be expected of a CRA.

178. First, one should take into consideration the position taken by the General Court in the Telefonica case, where the General Court spoke of persons "carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation. They can on that account be expected to take special care in assessing the risks that such an activity entails"[247]. Similarly, it is considered that, operating within the framework of a regulated industry, a CRA which holds itself out as a professional entity and carries out regulated activities should be expected to exercise special care in assessing the risks that its acts and omissions may entail.

179. Second, regard should be given to the nature and significance of the objectives and provisions of the Regulation. In this respect, Recitals (1) and (2) of the Regulation emphasise the important role and impact of CRAs in global securities and banking markets, the resulting essential need for credit rating activities to be conducted in accordance with principles of integrity, transparency, responsibility and good governance, and the resulting intention of the legislator to provide stringent requirements in relation to the conduct of CRAs. Further, the weight given to these considerations by the legislator is reflected by the nature and extent of the requirements imposed on CRAs under Annex I of the Regulation and by the corresponding infringement provisions under Annex III of the Regulation. Moreover, of more particular note, the Regulation envisages that an important function of a CRA is to ensure that it monitors its own activities in order to comply with the Regulation and in order to identify instances in which its present practices carry the risk of non-compliance with the Regulation. For instance, the requirement for a CRA to have sound administrative or accounting procedures, internal controls mechanisms or to establish and maintain a compliance function reflect the importance of this function.

180. Therefore, on this basis, the standard of care to be expected of a CRA is high.

181. This high standard of care has been confirmed by the Joint Board of Appeal of the European Supervisory Authorities, which has stated that "ESMA rightly emphasises that financial services providers … play an important role in the economy of the EU, as well as in the financial stability and integrity of the financial markets" and that "[a] high standard of care is to be expected of such persons"[248].

182. The determination of whether an infringement is committed negligently is a question of fact[249].

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[247] Case T-336/07, Telefónica, SA and Telefónica de España, SA v Commission [2012] ECLI:EU:T:2012:172, para. 323.
[248] See para. 285 of the decisions of the Board of Appeal in the Appeals of Svenka Handelsbanken AB, Skandinaviska Enskilda Banken AB, Swedbank AB and Nordea Bank Abp against ESMA's decision in the Nordic Banks case (ref. BoA D 2019 01, BoA D 2019 02, BoA D 2019 03 and BoA D 2019 01), available at https://www.eiopa.europa.eu/content/board-appeal-publishes-its-decision-nordic-banks%E2%80%99-appeals-decisions-esma-%E2%80%9Cshadow-ratings%E2%80%9D_en.
[249] See para. 158 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03) available at:
https://www.esma.europa.eu/sites/default/files/library/boa_d_2020_03_decision_on_scope_ratings_v_esma.pdf.

#### 4.1.2.2 Assessment of whether there is negligence in the instant case

183. Regarding the assessment of negligence in the case at hand, the following is of note.

184. Internal controls are a key element set forth in the Regulation. In particular, internal control mechanisms should: (i) clearly identify the controls and the persons in charge of the controls; and (ii) ensure that the controls have been adequately implemented.

185. In the instant case, as set out above, the PSI did not perform several steps that were mandated by its own processes or did not adequately document the steps it had performed. In each of these instances there were also misunderstandings and miscommunications within the PSI and between the PSI and the issuers of securities, which led to premature publications of ratings by the PSI for securities issued by six issuers over a period of several years.

186. In this respect, the PSI asserted that "the steps identified as missing do not significantly impact the overall outcome and were not the cause of misunderstandings or miscommunications for analysts and others involved in releasing credit ratings." [250] However, the fact remains that numerous important steps were not taken or not properly documented. All the while, the PSI's internal control mechanisms did not pick up on and / or respond to these serious issues for almost two years: from June 2019 to at least May 2021.

187. In addition, the evidence set out above demonstrates clearly that the PSI failed to ensure that its Compliance function monitored and reported on the adequacy and effectiveness of the procedures in place to ensure compliance with its obligations under the Regulation, and actions taken to address any deficiencies. The PSI therefore failed to show the special care expected of a legal person operating as a CRA in one of the most fundamental areas of its work, namely its internal control mechanisms.

188. On the basis of the facts described above, the PSI failed to take the special care expected of a CRA. As a professional firm in the financial services sector subject to stringent regulatory requirements, the PSI is required to take special care in assessing the risks that its acts or omissions entail, and has failed to take that care; and as a result of that failure, it has not foreseen the consequences of its acts or omissions, including particularly its infringement of the Regulation, in circumstances where a CRA in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

189. Therefore, the Board finds that the PSI has been negligent when committing the infringement at Point 12, Section I, Annex III of the Regulation of the Regulation.

### 4.1.3 Fine

#### 4.1.3.1 Determination of the basic amount

190. Article 36a of the Regulation provides in paragraph 2 as follows:

[250] See Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 24.1

"2. The basic amount of the fines referred to in paragraph 1 shall be included within the following limits:

(a) for the infringements referred to in points 1 to 5, 11 to 15, 19, 20, 23, 26a to 26d, 28, 30, 32, 33, 35, 41, 43, 50, 51 and 55 to 62 of Section I of Annex III, the fines shall amount to at least EUR 500 000 and shall not exceed EUR 750 000; …

To decide whether the basic amount of the fines should be set at the lower, middle or higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover in the preceding business year of the credit rating agency concerned. The basic amount shall be at the lower end of the limit for credit rating agencies whose annual turnover is below EUR 10 million, the middle of the limit for the credit rating agencies whose annual turnover is between EUR 10 and 50 million and the higher end of the limit for the credit rating agencies whose annual turnover is higher than EUR 50 million".

191. It has been established that the PSI committed the infringement set out at Point 12 of Section I of Annex III of the Regulation regarding the internal control mechanisms.

192. To determine the basic amount of the fine, the Board has regard to the latest available audited financial statement, indicating the PSI's annual turnover.

193. In 2021, the PSI had a total turnover of EUR 703,424,000[251].

194. Thus, the basic amount of the fine for the PSI for the infringement listed in Point 12 of Section I of Annex III of the Regulation is set at the higher end of the limit of the fine set out in Article 36a(2)(a) of the Regulation and shall not exceed EUR 750 000.

#### 4.1.3.2 Applicable aggravating factors

195. The applicable aggravating factor listed in Annex IV of the Regulation is set out below.

Annex IV, Point I. 2. If the infringement has been committed for more than six months, a coefficient of 1,5 shall apply.

196. The infringement was committed for more than six months, because it started in June 2019 (with the internal control failures leading to the premature release of the ratings related to [Issuer 2] Securities) and it lasted until September 2021 (with the internal control failures leading to the premature release of the rating related to [Issuer 6] Securities).

197. Therefore, the Board deems that this aggravating factor is applicable.

[251] S&P Global Ratings Europe Limited Annual Report and Financial Statements for the Financial Year Ended 31 December 2021, pp. 2, 12 and 29.

4.1.3.3 Mitigating factors

198. Annex IV of the Regulation lists the mitigating factors to be taken into consideration for the adjustment of the fine. Their application is assessed below.

Annex IV, Point II. 1. If the infringement relates to a breach listed in Section II or III of Annex III and has been committed for fewer than 10 working days, a coefficient of 0,9 shall apply.

199. The Board deems that this mitigating factor is not applicable; the infringement at Point 12 is listed in Section I of Annex III of the Regulation and not in Section II or III as required by this provision.

Annex IV, Point II. 2. If the credit rating agency's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.

200. The PSI indicated that "S&P assigns credit ratings of debt issuances by following specific processes - either through the RPM process or via the NID. These processes are subject to formal governance, which has senior management oversight, and are designed to ensure compliance with S&P's regulatory obligations."[252]

201. However, this does not constitute sufficient evidence that the PSI's senior management has taken all the necessary measures to prevent the infringement. More generally, the Board agrees with the IIO who did not find evidence that the PSI's senior management had taken all the necessary measures to prevent the infringement of Point 12 of Section I of Annex III of the Regulation committed by the PSI concerning the internal control mechanisms.

202. Therefore, the Board deems that this mitigating factor is not applicable.

Annex IV, Point II. 3. If the credit rating agency has brought quickly, effectively and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply.

203. The PSI has not brought "quickly, effectively and completely the infringement to ESMA's attention". On the contrary, it was through the initial referral by the AFM and subsequent investigation by ESMA Supervisors that the matter was discovered.

204. In this respect, the PSI notes that "… the matter was not escalated to ESMA until this time as Compliance was not previously aware of the [Issuer 2], [Issuer 3] and [Issuer 4] Releases, and did not consider the [Issuer 1] Release to be an error as the issuer had given permission for the credit ratings to be published." [253] However, in the Board's view, the premature [Issuer 1] release should have been escalated to the regulator and the PSI's taxonomy of the premature releases at the time they occurred is irrelevant in deciding whether the mitigating factor should apply.

205. Therefore, the Board deems that this mitigating factor is not applicable.

[252] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022 Question 40, p. 20.
[253] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 25.2.

Annex IV, Point II. 4. If the credit rating agency has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

206. The PSI conducted an internal review of its ratings process, updated certain procedures, and undertook certain ameliorative actions suggested by its Controls Working Group [254]. In particular, it undertook the actions referenced at Section 4.1. These measures should ensure that a similar infringement cannot be committed in the future, even though this cannot be excluded.

207. If these measures were taken voluntarily, the mitigating factor under Annex IV, Point II.4. of the Regulation would be applicable.

208. There is no definition of what "voluntarily" means in the context of this mitigating factor.

209. It appears that these measures might have been partially prompted by interactions with ESMA, but that does not imply that they were not taken voluntarily.

210. Therefore, the Board deems that this mitigating factor is applicable for the infringement of Point 12 of Section I of Annex III of the Regulation committed by the PSI.

4.1.3.4 Determination of the adjusted fine

211. In accordance with Article 36a(3) of the Regulation, taking into account the applicable aggravating and mitigating factors, the basic amount of EUR 750 000 must be adjusted as follows.

212. The difference between the basic amount and the amount resulting from the application of each individual coefficient is added to the basic amount in the case of the aggravating factor and subtracted from the basic amount in the case of the mitigating factor:

Aggravating factor set out in Annex IV, Point I. 2:

EUR 750,000 x 1.5 = EUR 1,125,000

EUR 1,125,000 – EUR 750,000 = EUR 375,000

EUR 375,000 x 1 = EUR 375,000

Mitigating factor set out in Annex IV, Point II. 4:

EUR 750,000 x 0.6 = EUR 450,000

EUR 750,000 – EUR 450,000 = EUR 300,000

[254] Exhibit 9, PSI's Comments on the Supervisory Report, 28 January 2022, pp.3-4, points 13 and 14.

EUR 300,000 x 1 = EUR 300,000

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 750,000 + EUR 375,000 – EUR 300,000 = EUR 825,000

213. Consequently, following adjustment by taking into account the applicable aggravating and mitigating factors, the amount of the fine to be imposed on the PSI for the internal controls infringement amounts to EUR 825,000.

### 4.1.4 Supervisory measures

214. Regard must be had to paragraphs 1 and 2 of Article 24 of the Regulation.

215. Given the factual findings in the case at hand and in particular the fact that significant changes were eventually introduced by the PSI to the relevant procedures, only the supervisory measure set out in Article 24(1)(e) of the Regulation may be considered appropriate with regard to the nature and the seriousness of the infringement.

216. It must thus be held that a public notice is to be issued.

## 4.2 Findings regarding the discontinuation infringement

217. This section of the Statement of Findings analyses whether the PSI committed the infringement at Point 5, Section III, Annex III of the Regulation:

> "The credit rating agency infringes Article 10(1) by not disclosing on a non-selective basis or in a timely manner a decision to discontinue a credit rating, including full reasons for the decision".

### 4.2.1 Analysis

218. The issue at stake in this aspect of the case is whether the PSI has breached its obligation under Article 10(1) of the Regulation to disclose any decision to discontinue a credit rating, on a non-selective basis and in a timely manner and to ensure that the information disclosed includes full reasons for the discontinuation.

219. Before examining the specific factual circumstances of the instant case, a detailed examination of the wording and the context of Point 5, Section III, Annex III of the Regulation, along with Article 10(1) of the Regulation is necessary. Below, that analysis is performed before that covering the facts.

#### 4.2.1.1 Analysis of the relevant provisions of the Regulation

220. Article 10(1) of the Regulation sets out the requirements regarding a decision to discontinue a credit rating. More specifically, it stipulates cumulative conditions to be met by a CRA in such circumstances: the CRA must ensure that such a decision is (1) disclosed, (2) on a non-selective

basis, (3) in a timely manner and that (4) the information disclosed includes full reasons for the discontinuance decision.

221. In order to establish an infringement of Article 10(1) in conjunction with Annex III, Section III, point 5 of the Regulation, it is thus necessary to evidence a decision by the CRA to discontinue that failed to comply with the requirements, i.e. the discontinuation must not comply with the requirements that it be non-selective, timely and that full reasons be given for the decision to discontinue.

222. Moreover, the terms "non-selective basis" and "in a timely manner" should be assessed on a case-by-case basis, as they are not defined in the legislation itself. Finally, the question as to whether full reasons were given should be assessed for every case.

223. Prior to the analysis of whether the above conditions have been met, it is necessary to assess the distinction between withdrawal, removal and discontinuation of a credit rating because these terms have been frequently used (often as if they were interchangeable) in the documentation of this case when referring to the fact that the prematurely released ratings no longer appeared on the PSI's Public Platforms before being reinstated.

224. 'Withdrawal' of a credit rating occurs in the specific situations set out in Commission Delegated Regulation (EU) 2015/2 of 30 September 2014 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 make available to the European Securities and Markets Authority (the "Delegated Regulation"). These categories are 1. in case of incorrect or insufficient information on issuer/issue; 2. in case of bankruptcy of the rated entity or debt restructuring; 3. in case of reorganisation of rated entity (including the merger or acquisition of the rated entity); 4. in case of the end of maturity of the debt obligation, or in case the debt is redeemed, called, prefunded, cancelled; 5. in case of automatic invalidity of rating due to business model of CRA (such as expiry of ratings valid for a predetermined period); 6. in case of rating withdrawal due to other reasons; 7. in case the rating is affected by one of the points specified in Annex I, Section B, Point 3 of the Regulation; 8. in case of client's request[255].

225. Given the foregoing, it is clear from the letter of the Regulation what constitutes 'withdrawal' as such instances are explicitly listed.

226. The Regulation does not provide a legal definition of the term 'removal'; therefore, it is analysed as a general notion. According to ESMA Supervisors, 'the removal from public platforms' is understood as the general action, not defined under the Regulation, of taking out of public platforms a credit rating that has been previously published by a CRA on the said platforms'[256]. The Board agrees with the IIO assessment that since the term 'removal' is not defined in the legislation, it should be interpreted bearing in mind its ordinary meaning: 'removal' is the act of taking something or someone away from somewhere or something.[257] In the context of the Regulation, it is thus to be interpreted broadly as any action by a CRA which results in taking away from Public Platforms a credit rating that had been previously published by a CRA.

[255] Field 11 of Table 2 of Part 2 of Annex I of the Delegated Regulation.
[256] Exhibit 3, ESMA Supervisors' Response to the IIO's Request, 18 March 2022, p. 10.
[257] Exhibit 38, REMOVAL _ Meaning in the Cambridge English Dictionary, 16 June 2022.

Therefore, the term 'removal' has been used in preceding sections to describe instances where the PSI removed ratings from platforms. This does not mean that such instances were not examples of discontinuation.

227. The Regulation also does not provide a definition of the term 'discontinuation'. Discontinuation of credit ratings refers to circumstances, falling under Article 10(1) of the Regulation and relates to credit ratings that have been issued by a CRA and disclosed publicly to the public or distributed by subscription. Bearing in mind the ordinary meaning of the term "discontinuation"[258], the definition of credit rating provided at Article 3(1) of the Regulation, and the scope of the Regulation outlined at Article 2(1) (which highlights the public nature of credit ratings)[259], it can be concluded that it encompasses situations in which a credit rating has been retracted, unpublished or made confidential after it was published.

228. This interpretation of the relevant terms is bolstered by a teleological reading of the Regulation (as is required; see section 4.1.1.1): Article 1 states that "This Regulation introduces a common regulatory approach in order to enhance the integrity, **transparency**, responsibility, good governance and independence of credit rating activities …" (emphasis added). In order to promote such transparency, decisions to discontinue should be disclosed in a reasoned, non-selective and timely manner.

229. In the instant case, therefore, the removal from the PSI's Public Platforms of credit ratings following premature release can constitute 'discontinuation' of the credit ratings for the purposes of Article 10(1) of the Regulation. The precise modalities (e.g. to "hide" the rating in the Public Platforms; to mark it confidential) which were taken to ensure this discontinuation occurs are irrelevant for present purposes.

230. The PSI "agrees that it is necessary to assess the distinction between discontinuation and other terms to assess whether there has been a Discontinuation Infringement … However, S&P disagrees with the suggestion … that these terms have been used interchangeably in the documentation of the investigation. As set out below, discontinuation has a clear meaning both within the CRA Regulation and in S&P's internal processes. Article 10(1) relates specifically to "any decision to discontinue a credit rating". As noted … the CRA Regulation does not define the term "discontinuation". However, relying on the ordinary meaning of discontinue, defined by the IIO as "the act of stopping doing or providing something", it is clear that Article 10(1) refers to a decision by a credit rating agent to cease maintaining a credit rating."[260]

231. Further, "In relation to each of the Releases, S&P did not stop, discontinue or cancel the credit rating itself as it was correct. The issue concerned only the timing of the release. Instead, the credit rating was removed from publication through an exceptions process and the same credit rating was later re-published, without adjustment, once the issuer had confirmed the bond had been publicly announced. Therefore, S&P disagrees with the assessment in the Statement that, in the absence of a definition, the ordinary meaning of the word discontinuation "encompasses

[258] Exhibit 39, DISCONTINUATION _ Meaning in the Cambridge English Dictionary, 16 June 2022, stating that discontinuation should be interpreted as "*the act of stopping doing or providing something*".
[259] Article 2(1) of the Regulation provides: "This Regulation applies to credit ratings issued by credit rating agencies registered in the Union and which are disclosed publicly or distributed by subscription".
[260] Exhibit 51, Reply to the Initial SoF, 2 August 2022, paras. 26.2 and 26.3.

situations in which a credit rating has been retracted, unpublished or made confidential"[261] … S&P disputes the suggestion that a teleological reading of Article 10(1) would reasonably lead to the conclusion that the removal of a credit rating from publication is synonymous with the discontinuance of a credit rating. Whilst the IIO refers to the importance of transparency, which is indeed one of the fundamental aims of the Regulation (as set out in Article 1), it does not follow that announcing further information about a credit rating that should not yet be published would enhance transparency."[262]

232. The Board disagrees with these arguments. The fact that the credit rating itself was correct is not relevant to the assessment of whether discontinuation occurred. As the PSI states, the credit rating was removed from publication which, in the Board's view (which is shared by the IIO), constitutes discontinuation; the arguments on this point are set out exhaustively above. Moreover, the Board agrees with the IIO's interpretation of the relevant provisions (and thus also the term 'discontinuation'), which is consistent with the broad aims of the Regulation as set out in, for example, Recital (1) and Article 1 of the Regulation, namely to enhance transparency of credit rating activities (amongst other objectives). The amended Article 1 of the Regulation lays down the following aims: the integrity, transparency, responsibility, good governance and independence of credit rating activities. The CRA is required to ensure that each of these aims is respected, including transparency. The PSI's acts and omissions as detailed above harmed transparency as the non-timely release of credit ratings led to information being made available to the market prematurely.

233. The PSI also argued "that there is a current lack of common understanding as to the interpretation of discontinuance, and that further regulatory guidance is required on this point."[263] The PSI asserted that ESMA was aware of this lack of clarity and had conducted two thematic reviews in this area. In addition, the PSI pointed specifically to a recent ESMA request for comment on a draft Q&A addressed to all CRAs "covering how CRAs should deal with incorrectly disclosed or discontinued ratings. This new question and answer expressly distinguishes between "incorrect disclosure" and "discontinuance". In these circumstances, it is wholly unjust to sanction S&P on the grounds adopted by the IIO, namely that S&P's actions amounted to discontinuance (and therefore a breach of the Regulation) when ESMA itself acknowledges the distinction between "incorrect disclosure" and "discontinuance" in its proposed Q&A".[264]

234. In this respect, the Board notes that ESMA conducts different activities as part of its supervision, which include among others thematic studies, Q&As and enforcement decisions. These are independent and separate processes. Q&As and other guidance to the market can be developed in parallel to other ongoing supervisory activities and in parallel to an enforcement case. ESMA regularly issues Q&As and undertakes thematic studies. These activities can in no way prevent ESMA from taking enforcement actions when a breach of the Regulation is established. Moreover, the analysis of the Board in this enforcement case concerns the obligations stemming from the Regulation (and their application to the facts at hand in the case) and a Q&A could not change the obligations on the PSI stemming from the Regulation.

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[261] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 26.4.
[262] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 26.6.
[263] PSI's response to the Board's initial statement of findings, para. 29.
[264] PSI's response to the Board's initial statement of findings, paras. 30-31.

235. Further, the PSI comments on internal processes: “Had S&P discontinued the credit ratings concerning the Releases, it would have followed a separate process set out in the "Discontinuance of a Credit Rating" section of the Withdrawal, Discontinuance and Suspension SOP. This process would not have been appropriate in the circumstances, not only because the Releases do not fall within the list of circumstances in which a credit rating may be discontinued under the SOP, but also because S&P would have had to restart the ratings process to re-publish the credit rating at a later date (as the original rating was discontinued). This would have likely delayed publication of the credit rating upon the issuance of the underlying bond, causing disruption for the issuer. Further, a description of the issuance would have remained visible on S&P's website for seven days after the credit rating was discontinued.”[265] The Board does not share the PSI’s view on discontinuation; the PSI had to comply with the cumulative conditions to be fulfilled by a CRA when discontinuing credit ratings and failed to do so. The process that the PSI would have followed if it took the view that it was discontinuing ratings is irrelevant to the assessment of whether the PSI complied with its obligations when discontinuing a credit rating, even if such a process might have been burdensome.

236. Finally, the PSI “decided not to announce the removal of credit ratings as it considered that any announcement would draw further attention to the ratings (which were released ahead of the publication of the underlying issuance) and might have caused confusion about the status of the debt issuance with the consequent danger of market disruption. In relation to the [Issuer 1] Release, this decision was made with input from Legal.”[266] This justification is however not a legal assessment of the procedures and steps which had to be followed according to the Regulation but rather a decision based on the PSI’s assumption that the announcement of the discontinuation of the credit ratings would draw further attention to the ratings. Such assumptions do not exempt the PSI from its obligation to act in accordance with the Regulation when the discontinuation of the relevant credit ratings occurred, especially in a context in which transparency is paramount, as already noted.

#### 4.2.1.2 Application to the instant case

237. The PSI commits this infringement by not disclosing a decision to discontinue a rating, including full reasons for such a decision, on a non-selective basis and in a timely manner. As noted above, the PSI needs to ensure that it complies with all the cumulative conditions.

238. In the instant case, there are six instances of premature disclosure and each is assessed in turn below. First, the possibility of discontinuation is assessed and, if it is established, each incident is then assessed against the cumulative elements.

239. The PSI initially disclosed these credit ratings prior to the public announcement of the new bond issuances by their issuers, and subsequently “removed” and re-published them. Upon discovery of the premature disclosures by either the concerned issuer or the PSI staff members, the PSI removed the credit ratings and related publications from its publication channels, including its website, within periods ranging from a few hours to three days. The PSI later published each of the credit ratings again.

[265] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 26.5.
[266] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 26.6.

240. Taking account of the above analysis of the terms “withdrawal”, “removal” and “discontinuation”, the ratings for [Issuer 1] Securities, [Issuer 2] Securities, [Issuer 3] Securities, [Issuer 4] Securities, [Issuer 5] Securities and [Issuer 6] Securities, are not instances of withdrawal, as cases of withdrawal are explicitly listed in the Regulation and none are relevant to the instant case.

241. It could be argued that two of the analysed ratings ([Issuer 1] Securities and [Issuer 6] Securities) may have been withdrawn at the client’s request, as provided in Field 11 of Table 2 of Part 2 of Annex I of the Delegated Regulation. However, as the term withdrawal is strictly defined in the legislation and entails an obligation to report the reason for withdrawal [267], it must be interpreted in a narrow way as an explicit request of a client to withdraw a rating, and not be extended to cases where a client requests, for instance, the retraction of a premature credit rating from the relevant CRA’s public platforms.

242. More specifically, regarding [Issuer 1] Securities, [Issuer 1] and the PSI agreed to change the status of the credit rating from “public” to “confidential”, pending further notice from [Issuer 1] to re-release it[268]. Such an agreement does not indicate a desire for [Issuer 1] for the rating to be withdrawn but rather a desire that it not be published until the issuance of the [Issuer 1] Securities. Regarding the [Issuer 6] Securities, the issuer requested the rating to be removed because the issue had not been launched[269]. However, there is no evidence that its intention was to withdraw the rating. Once the issue has been launched[270], the issuer contacted the PSI and the rating was re-released[271].

243. Bearing in mind the reasoning above, all the six instances can therefore be interpreted as acts of discontinuation.

[Issuer 1] Securities

244. As described in more detail in section 2.2.1, in the case of [Issuer 1] Securities, the issuer requested the discontinuation of the prematurely disclosed credit ratings at 8:51 AM CET (7:51 AM UTC+01:00)[272]. A few minutes later, at 9:02 AM CET, [CD] informed the Ratings Support team and at 11:54 AM CET, [CD] reached out to the S&P Editorial team, requesting that the research update report be removed from publication as soon as possible[273].

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[267] According to Article 2 of the Delegated Regulation, when a reported rating is withdrawn, the reasons shall be reported in Field 11 of Table 2 of Part 2 of Annex I.
[268] Exhibit 1, Supervisory Report, 3 January 2022, para. 47 and Supervisory Report, Exhibit 70, SPGI0000000165.pdf, 12 May 2021.
[269] Exhibit 4, PSI’s Response to the IIO’s RFI, 23 March 2022, Appendix 2, p. 49 and Exhibit 11, CAPR.000001 – Email – RE: S&P Global Ratings Rating Letter, 23 March 2022.
[270] Exhibit 4, PSI’s Response to the IIO’s RFI, 23 March 2022, Appendix 2, p. 53 and Exhibit 36, CAPR.000025 – Email - RE: S&P Global Ratings Rating Letter, 23 March 2022.
[271] Exhibit 4, PSI’s Response to the IIO’s RFI, 23 March 2022, Appendix 2, p. 54 and Exhibit 37, CAPR.000003 – Email – RE: RITM0789431 – New assignment for CORRE IT 3rd Lvl Support, 23 March 2022.
[272] Exhibit 1, Supervisory Report, 3 January 2022, para. 44. See also Supervisory Report, Exhibit 60, SPGI0000000228.pdf, 12 May 2021, where an employee of the issuer indicated: “Got the message that you send this externally already, before we published this and saw the final note. Can you please retreat this at once! Cant reach you. Please call me back”
[273] Exhibit 1, Supervisory Report, 3 January 2022, para. 130 and Supervisory Report, Exhibit 61, SPGI0000000360.pdf, 12 May 2021.

245. This led to a discontinuation of the rating. However, there is no evidence indicating that the decision was publicly disclosed and / or that full reasons for the decision were given.

246. The republication of the S&P research update report on 12 September 2019 included an Editor's Note, which stated that S&P was reissuing the research update report following the announcement of the issuance to the markets, but which did not specify that the research update report and underlying credit ratings had been previously removed from the website.

247. Therefore, the cumulative conditions to be fulfilled by a CRA in the case of discontinuation are not met and the PSI committed the infringement under Point 5 of Section III of Annex III due to the improper disclosure of the discontinuation of the [Issuer 1] Securities credit ratings.

[Issuer 2] Securities

248. As described in more detail in Section 2.2.2, in the case of [Issuer 2] Securities, an internal IT ticket was submitted stating: "the following issue IDs were prematurely released and as a result need suppressing"[274]. The issuer was then informed. On 8 July 2019[275], after [AB] received the final Term Sheet of [Issuer 2] Securities[276], she gave an internal instruction for the re-publication of the credit ratings[277], which were published on Public Platforms on 10 July 2019[278].

249. As in the case of [Issuer 1] Securities, this led to a discontinuation of the rating. Again, there is no evidence indicating that the decision was publicly disclosed and / or that full reasons for the decision were given.

250. Therefore, the cumulative conditions to be fulfilled by a CRA in the case of discontinuation have not been met and the PSI committed the infringement under Point 5 of Section III of Annex III due to the improper disclosure of the discontinuation of the [Issuer 2] Securities credit ratings.

[Issuer 3] Securities

251. As described in more detail in Section 2.2.3, in the case of [Issuer 3] Securities, following the internal discussions as to whether the credit rating should have been disclosed[279], the PSI initiated the internal process for discontinuing the prematurely disclosed credit rating (an IT ticket indicating "***VERY CRITICAL*** The analyst wants to HIDE rating in CORE for Issue ID: 1612408" was raised[280]). As with [Issuer 2] Securities, the process was launched through submission of an IT incident ticket[281]. The discontinuation of the credit rating was then

[274] Exhibit 1, Supervisory Report, 3 January 2022, para. 134 and Supervisory Report, Exhibit 89, Exhibit 89, [Issuer 2] INC0994094, 12 May 2021.
[275] Exhibit 1, Supervisory Report, 3 January 2022, para. 59.
[276] Supervisory Report, Exhibit 20, SPGI0000001066.pdf, 12 May 2021, Supervisory Report, Exhibit 21, SPGI0000001066.0001.pdf, 12 May 2021, Supervisory Report, Exhibit 22, SPGI0000001066.0002.pdf, 12 May 2021, Supervisory Report, Exhibit 23, SPGI0000001066.0003.pdf, 12 May 2021 and Supervisory Report, Exhibit 82, SPGI0000000846.pdf, 12 May 2021.
[277] Supervisory Report, Exhibit 93, Analyst email - permission to republish Ratings.msg.pdf, 12 May 2021.
[278] Exhibit 1, Supervisory Report, 3 January 2022, para. 60 and Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[279] Supervisory Report, Exhibit 101, SPGI0000000771.pdf, 12 May 2021.
[280] Supervisory Report, Exhibit 103, [Issuer 3] INC1536119.pdf, 12 May 2021.
[281] Supervisory Report, Exhibit 103, [Issuer 3] INC1536119.pdf, 12 May 2021 and Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.

completed following internal approval[282]. Subsequently, the [Issuer 3] Securities credit ratings were re-released on Public Platforms[283]. Importantly, [Issuer 3] was not aware that the credit rating was released and then removed ahead of the issuance of the relevant instrument[284].

252. As in the cases of [Issuer 1] Securities and [Issuer 2] Securities, this led to a discontinuation of the rating. Again, there is no evidence indicating that the discontinuation decision was publicly disclosed and / or that full reasons for the decision were given.

253. Therefore, the cumulative conditions to be fulfilled by a CRA in the case of discontinuation have not been met and the PSI committed the infringement under Point 5 of Section III of Annex III due to the improper disclosure of the discontinuation of the [Issuer 3] Securities credit rating.

[Issuer 4] Securities

254. As described in more detail in Section 2.2.4, in the case of [Issuer 4] Securities, the issuer instructed the PSI to publish the credit rating on 30 June 2020[285]. Notwithstanding this instruction, the credit rating for [Issuer 4] Securities was publicly released on 26 June 2020[286]. Subsequently, after internal discussions[287] and after [GH] submitted an IT ticket requesting the removal of the rating[288], the prematurely published credit rating was discontinued[289]. On 30 June 2020[290], after AC from the NID team instructed the reinstatement ("Can you please reinstate the rating back to Core?"[291]), the credit rating was re-released on the PSI's website and relevant platforms[292], further to [Issuer 4]'s request to the PSI that same day[293]. [Issuer 4] was not aware that a credit rating was released and then removed prior to the issuance of the relevant bond[294].

255. As in the cases of [Issuer 1] Securities, [Issuer 2] Securities and [Issuer 3] Securities, this led to the discontinuation of the rating. Again, there is no evidence indicating that the decision was publicly disclosed and / or that full reasons for the decision were given.

[282] Supervisory Report, Exhibit 105, SPGI0000000775.0002.0001.pdf, 12 May 2021.
[283] Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[284] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, question 24, p. 13.
[285] Supervisory Report, Exhibit 114, SPGI0000000107.pdf, 12 May 2021 and Supervisory Report, Exhibit 115, SPGI0000000108.pdf, 12 May 2021.
[286] Exhibit 1, Supervisory Report, 3 January 2022, para. 73 and Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[287] Supervisory Report, Exhibit 118, SPGI0000000003.pdf, 12 May 2021, Supervisory Report, Exhibit 119, [Issuer 4] - IT informs Rating is re-released - 1.pdf, 12 May 2021, Supervisory Report, Exhibit 120, SPGI0000000078.pdf, 12 May 2021 and Supervisory Report, Exhibit 121, SPGI0000000078.0001.pdf, 12 May 2021.
[288] Supervisory Report, Exhibit 181, [Issuer 4] - Ticket to IT - Email to suppress rating.pdf, 12 May 2021.
[289] Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021.
[290] Exhibit 1, Supervisory Report, 3 January 2022, para. 77.
[291] Supervisory Report, Exhibit 119, [Issuer 4] - IT informs Rating is re-released - 1.pdf, 12 May 2021.
[292] Supervisory Report, Exhibit 56, 9. Timing of disclosures, removals and ERP submission time.xlsx, 23 July 2021, Supervisory Report, Exhibit 122, SPGI0000000061.pdf, 12 May 2021 and Supervisory Report, Exhibit 124, 'SPGI0000000137.pdf, 12 May 2021.
[293] Supervisory Report, Exhibit 123, SPGI0000000116.pdf, 12 May 2021.
[294] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, question 24, p. 13.

256. Therefore, the cumulative conditions to be fulfilled by a CRA in the case of discontinuation have not been met and the PSI committed the infringement under Point 5 of Section III of Annex III due to the improper disclosure of the discontinuation of the [Issuer 4] Securities credit rating.

[Issuer 5] Securities

257. As described in greater detail in Section 2.2.5, in the case of [Issuer 5] Securities, due to a misunderstanding between the PSI and [Issuer 5], the credit rating was released on the PSI's website on 25 May 2021[295], even though [Issuer 5] sent an email to the PSI requesting the credit rating be published the next day[296]. After internal approval from [OP] ("You have confirmation to withdraw the rating ASAP on [Issuer 5]'s instrument senior unsecured bond exchangeable"[297]), the credit rating was discontinued following an IT request. The credit rating remained visible to the PSI employees[298]. On 26 May 2021, upon Issuer 5's confirmation that the rating could be made public, the credit rating was published again[299].

258. As in the cases of [Issuer 1] Securities, [Issuer 2] Securities, [Issuer 3] Securities and [Issuer 4] Securities, this led to a discontinuation of the rating. Again, there is no evidence indicating that the decision was publicly disclosed and / or that full reasons for the decision were given.

259. Therefore, the cumulative conditions to be fulfilled by a CRA in the case of discontinuation have not been met and the PSI committed the infringement under Point 5 of Section III of Annex III due to the improper disclosure of the discontinuation of the [Issuer 5] Securities credit rating.

[Issuer 6] Securities

260. As analysed in more detail in Section 2.2.6, the [Issuer 6] Securities credit rating was released prematurely. On 8 September 2021, [Issuer 6] replied to the PSI asking if the letter was meant only for internal records; the PSI replied that the rating had been released and asked if it should be removed. [Issuer 6] confirmed that the issue had not been launched and requested the discontinuation of the credit rating ("Please remove the rating from your website, we will let you know when we will need it to be published"[300]). Following internal processes, the credit rating was discontinued from S&P Products but remained available on CORE[301]. The credit rating was re-released on 28 September 2021, following communication between the issuer and the PSI and following internal instructions and processes[302].

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[295] Exhibit 24, CAPR.000060 – [Issuer 5] - RPM Job History, 23 March 2022 and Exhibit 25, CAPR.000043 – Email - CGS, Corporate Ratings: New Final Ratings Action Released to CORE - W -367853, [Issuer 5], France, 23 March 2022.
[296] Exhibit 26, CAPR.000034 – Email - Fwd: [Issuer 5] - S&P Rating Letter, 23 March 2022.
[297] Exhibit 40, CAPR.000041 – Email - Re: [Issuer 5] - S&P Rating Letter, 23 March 2022.
[298] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 1, p. 36.
[299] Exhibit 28, CAPR.000033 – Email - RE: INC2392855 & RITM0707403 - HELP + FURTHER STEPS required, 23 March 2022.
[300] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 49 and Exhibit 11, CAPR.000001 – Email – RE: S&P Global Ratings Rating Letter, 23 March 2022.
[301] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 49, Exhibit 34, CAPR.000011 – Email - RE: S&P Global Ratings Rating Letter --Data change in core W-372351,[Issuer 6], AM & IBCO approval needed, 23 March 2022 and Exhibit 35, CAPR.000020 – Email - Re: S&P Global Ratings Rating Letter - -Data change in core W-372351,[Issuer 6], AM & IBCO approval needed., 23 March 2022.
[302] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Appendix 2, p. 54 and Exhibit 37, CAPR.000003 – Email – RE: RITM0789431 – New assignment for CORRE IT 3rd Lvl Support, 23 March 2022.

261. As in the cases of [Issuer 1] Securities, [Issuer 2] Securities, [Issuer 3] Securities, [Issuer 4] Securities and [Issuer 5] Securities, this led to a discontinuation of the rating. Again, there is no evidence indicating that the decision was publicly disclosed and / or that full reasons for the decision were given.

262. Therefore, the cumulative conditions to be fulfilled by a CRA in the case of discontinuation have not been met and the PSI committed the infringement under Point 5 of Section III of Annex III due to the improper disclosure of the discontinuation of the [Issuer 6] Securities credit rating.

#### 4.2.1.3 Conclusion

263. For the reasons set out above, the Board, in agreement with the IIO, finds that, by not disclosing the relevant decisions to discontinue a credit rating, on a non-selective basis and in a timely manner, including full reasons for such a decision in six instances, the PSI failed to comply with the requirement set out in Article 10(1) of the Regulation.

264. This constitutes the infringement set out at Point 5 of Section III of Annex IIII of the Regulation.

### 4.2.2 Intent or negligence

265. Article 36a(1) of the Regulation provides as follows:

> "Where, in accordance with Article 23e(5), ESMA's Board of Supervisors finds that a credit rating agency has, intentionally or negligently, committed one of the infringements listed in Annex III, it shall adopt a decision imposing a fine in accordance with paragraph 2".
>
> "An infringement by a credit rating agency shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that the credit rating agency or its senior management acted deliberately to commit the infringement".

266. In accordance with Article 36a(1) of the Regulation, a finding that an infringement has been committed by a CRA with intention or negligence will lead to the imposition of a fine. Consequently, the Board needs to conclude whether the evidence pertaining to the present case shows that the relevant infringement has been committed by the PSI intentionally or negligently.

267. In accordance with Article 36a(1) of the Regulation, a finding that an infringement has been committed intentionally requires a finding of "objective factors which demonstrate that the credit rating agency or its senior management acted deliberately to commit the infringement".

268. The factual background as set out in this Statement of Findings does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

269. It should therefore be assessed whether the PSI acted with negligence.

270. As regards the preliminary remarks regarding negligence, reference is made to the considerations of the Board set out above.

#### 4.2.2.1 Assessment of whether there is negligence in the instant case

271. Regarding the assessment of negligence in the case at hand, the following is of note.

272. Enhancing transparency of credit rating activities is a key aim of the Regulation[303]; in this context, CRAs are required to disclose any decision to discontinue a credit rating, on a non-selective basis and in a timely manner. Moreover, the information disclosed must include full reasons for the decision. This requirement is clear from a simple reading of Article 10(1) of the Regulation and does not leave room for interpretation. A CRA from which a high standard of care is expected should therefore have complied with this requirement.

273. The evidence demonstrates that the PSI failed to ensure that it complied with the above requirements. It prematurely released credit ratings in six instances. Then, when discontinuing those ratings, the PSI failed to publicly disclose the decision to discontinue and / or give full reasons for those decisions. Importantly, in some of these cases, the discontinuation of the premature credit rating was requested by the issuers, and in other cases, the discontinuation was processed internally without informing the issuers. The PSI therefore failed to show the special care expected of a legal person operating as a CRA in one of the most fundamental areas of its work, namely ensuring transparency and appropriate disclosure of credit ratings.

274. On the basis of the foregoing, the PSI failed to take the special care expected of a CRA. As a professional firm in the financial services sector subject to stringent regulatory requirements, the PSI is required to take special care in assessing the risks that its acts or omissions entail, and has failed to take that care; and as the result of that failure, it has not foreseen the consequences of its acts or omissions, including particularly its infringement of the Regulation, in circumstances where a CRA in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

275. Therefore, the Board finds that the PSI has been negligent when committing the infringement of Point 5 of Section III of Annex IIII of the Regulation.

### 4.2.3 Fine

#### 4.2.3.1 Determination of the basic amount

276. Article 36a of the Regulation provides in paragraph 2 as follows:

> "2. The basic amount of the fines referred to in paragraph 1 shall be included within the following limits:
>
> (a) for the infringements referred to in points 1 to 5, 11 to 15, 19, 20, 23, 26a to 26d, 28, 30, 32, 33, 35, 41, 43, 50, 51 and 55 to 62 of Section I of Annex III, the fines shall amount to at least EUR 500 000 and shall not exceed EUR 750 000; …"

[303] Article 1 of the Regulation.

To decide whether the basic amount of the fines should be set at the lower, middle or higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover in the preceding business year of the credit rating agency concerned. The basic amount shall be at the lower end of the limit for credit rating agencies whose annual turnover is below EUR 10 million, the middle of the limit for the credit rating agencies whose annual turnover is between EUR 10 and 50 million and the higher end of the limit for the credit rating agencies whose annual turnover is higher than EUR 50 million".

277. It has been established that the PSI committed the infringement set out at Point 5 of Section III of Annex III of the Regulation regarding the discontinuation of credit ratings.

278. To determine the basic amount of the fine, the Board has regard to the latest available audited financial statement, indicating the PSI's annual turnover.

279. In 2021, the PSI had a total turnover of EUR 703,424,000[304].

280. Thus, the basic amount of the fine for the PSI for the infringement listed in Point 5 of Section III of Annex III of the Regulation is set at the higher end of the limit of the fine set out in Article 36a(2)(a) of the Regulation and shall not exceed EUR 100,000.

#### 4.2.3.2 Applicable aggravating factors

281. The applicable aggravating factors listed in Annex IV of the Regulation are set out below.

282. Annex IV, Point I. 1. If the infringement has been committed repeatedly, for every time it has been repeated, an additional coefficient of 1,1 shall apply.

283. In the instant case, the PSI did not properly disclose the relevant decisions to discontinue the credit ratings on six occasions. These failings happened in different time frames, due to various types of misunderstandings and deficiencies and, once identified (either by the PSI or the issuer), were handled in different ways. The infringement was therefore committed each time the PSI did not disclose the relevant discontinuation in a way which was compliant with Article 10(1) of the Regulation.

284. Therefore, the Board deems that this aggravating factor is applicable. For every time that the infringement was repeated (i.e. five times), an additional coefficient of 1,1 shall be applied.

285. Annex IV, Point I. 6. If no remedial action has been taken since the breach has been identified, a coefficient of 1,7 shall apply.

286. In determining whether this aggravating factor applies, the specific actions taken by the PSI to remediate the infringement must be taken into account. In this case, the infringement was brought to an end not because of any remedial actions by the PSI, but because the ratings were reinstated after they were discontinued. Once the PSI decided to remove the credit ratings, it did not take any action at any time leading to the disclosure of the decision to discontinue a credit rating. Moreover, there is no evidence indicating that full reasons for the decision were given.

[304] S&P Global Ratings Europe Limited Annual Report and Financial Statements for the Financial Year Ended 31 December 2021, pp. 2, 12 and 29.

287. Therefore, the Board deems that no remedial actions were taken and this aggravating factor is applicable[305].

4.2.3.3 Mitigating factors

288. Annex IV of the Regulation lists the mitigating factors to be taken into consideration for the adjustment of the fine. Their application to the instant investigation is assessed below.

289. Annex IV, Point II. 1. If the infringement relates to a breach listed in Section II or III of Annex III and has been committed for fewer than 10 working days, a coefficient of 0,9 shall apply.

290. The infringement at Point 5 was committed repeatedly; the infringement did not last longer than ten working days in any of the analysed instances.

291. Therefore, the Board deems that this mitigating factor is applicable.

292. Annex IV, Point II. 2. If the credit rating agency's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.

293. The PSI indicated that "S&P assigns credit ratings of debt issuances by following specific processes – either through the RPM process or via the NID. These processes are subject to formal governance, which has senior management oversight, and are designed to ensure compliance with S&P's regulatory obligations."[306]

294. However, this is not sufficient to show that the PSI's senior management has taken all the necessary measures to prevent the infringement. More generally, there is no evidence in the file showing that the PSI's senior management has taken all the necessary measures to prevent the infringement of Point 5 of Section III of Annex III of the Regulation committed by the PSI concerning the discontinuation of credit ratings.

295. Therefore, the Board deems that this mitigating factor is not applicable.

296. Annex IV, Point II. 3. If the credit rating agency has brought quickly, effectively and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply.

297. The PSI has not brought "quickly, effectively and completely the infringement to ESMA's attention". Indeed, this infringement was discovered through the investigation carried out by ESMA Supervisors. With regards to the premature release of the [Issuer 5] Securities rating, although it was brought to ESMA's attention at the PSI's initiative, it cannot be considered to have been brought quickly, effectively, and completely to ESMA's attention.

298. Therefore, the Board deems that this mitigating factor is not applicable.

[305] The Board notes that when the IIO enquired about the remedial actions taken by the PSI in the areas covered by this investigation, the PSI did not provide any evidence of remediation specific to discontinuation. See Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 41, pp. 20-21.
[306] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 40, p. 20.

299. Annex IV, Point II. 4. If the credit rating agency has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

300. As explained above regarding the aggravating factor set by Annex IV, Point I. 6. of the Regulation, no remedial actions have been taken since the infringement related to the discontinuation of the credit ratings of [Issuer 1] Securities, [Issuer 2] Securities, [Issuer 3] Securities, [Issuer 4] Securities, [Issuer 5] Securities and [Issuer 6] Securities was identified.

301. Therefore, the Board deems that this mitigating factor is not applicable.

#### 4.2.3.4 Determination of the adjusted fine

302. In accordance with Article 36a(3) of the Regulation, taking into account the applicable aggravating and mitigating factors, the basic amount of EUR 100,000 must be adjusted as follows.

303. The difference between the basic amount and the amount resulting from the application of each individual coefficient set out in Annex IV of the Regulation is added to the basic amount in the case of the aggravating factors and subtracted from the basic amount in the case of the mitigating factor:

Aggravating factor set out in Annex IV, Point I. 1:

EUR 100,000 x 1.1 = EUR 110,000

EUR 110,000 – EUR 100,000 = EUR 10,000

EUR 10,000 x 5 = EUR 50,000

Aggravating factor set out in Annex IV. Point I.6 :

EUR 100,000 x 1.7 = 170,000

EUR 170,000 – EUR 100,000 = EUR 70,000

EUR 70,000 x 1 = EUR 70,000

Mitigating factor set out in Annex IV, Point II. 1:

EUR 100,000 x 0.9 = EUR 90,000

EUR 100,000 - EUR 90,000 = EUR 10,000

EUR 10,000 x 1 = EUR 10,000

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 100,000 + EUR 50,000 + EUR 70,000 – EUR 10,000 = EUR 210,000

304. Consequently, following adjustment by taking into account the applicable aggravating and mitigating factors, the amount of the fine to be imposed on the PSI for the discontinuation infringement amounts to EUR 210,000.

### 4.2.4 Supervisory measures

305. Regard must be had to paragraphs 1 and 2 of Article 24, of the Regulation.

306. Given the factual findings in the case at hand, only the supervisory measure set out in Article 24(1)(e) of the Regulation may be considered appropriate with regard to the nature and the seriousness of the infringement.

307. It must thus be held that a public notice is to be issued.

## 4.3 Findings regarding the ERP infringement

308. This section of the Statement of Findings analyses whether the PSI committed the infringement at point 4a, Section II, Annex III of the Regulation:

"The credit rating agency infringes Article 11a(1) by not making available the required information or by not providing that information in the required format as referred to in that paragraph".

### 4.3.1 Analysis

309. The issue at stake in this aspect of the case is whether the PSI breached its obligation under Article 11a(1) of the Regulation, when issuing a credit rating or a rating outlook, to submit to ESMA rating information, including the credit rating and rating outlook of the rated instrument, information on the type of credit rating, the type of rating action, and date and hour of publication.

310. As described in more detail in Section 2.3 above, to carry out the tasks related to the ERP, the PSI put in place the GRRG ERP SOP, which specifies the responsibilities of the PSI's daily credit ratings delivery to ESMA.

311. Before examining the specific factual circumstances of the instant case, a detailed examination of the wording and the context of Point 4a, Section II, Annex III of the Regulation, along with Article 11a(1) of the Regulation is necessary. Below, the analysis is performed before that covering the facts.

#### 4.3.1.1 Analysis of the relevant provisions of the Regulation

312. Recital (31) of 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 provides:

"Investors, issuers and other interested parties should have access to up-to-date rating information on a central website. A European rating platform should be established by ESMA

and should allow investors to easily compare all credit ratings that exist with regard to a specific rated entity. It is important that the European rating platform website shows all available credit ratings per instrument in order to allow investors to consider the whole variety of opinions before taking their own investment decision. However, in order not to undermine the ability of credit rating agencies to operate under the investor-pays model, such credit ratings should not be included in the European rating platform. The European rating platform should help smaller and new credit rating agencies to gain visibility. The European rating platform should incorporate ESMA's central repository with a view to creating a single platform for all available credit ratings per instrument and for information on historical performance data, published on the central repository. The European Parliament supported the establishment of such publication of credit ratings in its resolution on credit rating agencies of 8 June 2011".

313. Article 11a(1) of the Regulation sets out the obligation imposed on CRAs, when issuing a credit rating or a rating outlook, to submit to ESMA rating information, which includes the credit and rating outlook of the rated instruments, information on the type of the credit rating, the type of the rating action, and most importantly for this case, date and hour of publication.[307]

314. Moreover, Point 4a of Section II of Annex III of the Regulation states that the CRA infringes Article 11a(1) by not making available to ESMA the required information understood as, inter alia, information on the date and hour of the publication.

315. In this respect, an understanding of the term 'required information' is important to define the scope of the infringement laid down in Point 4a. Some elements are necessarily included in 'the required information' as they are explicitly listed in Article 11a(1) of the Regulation. However, the word 'including' indicates that the list is not exhaustive, and therefore other elements may be required.

316. To understand which other elements form part of the information that CRAs are required to report to the ERP, it is important to consider the objectives of Article 11a of the Regulation as analysed below.

317. First, the relevant recital, namely Recital (31) of 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, underlines that one of the purposes of the Regulation is to have up-to-date rating information which enhances transparency and certainty for investors and issuers.

318. Further, the Delegated Regulation aims to explain the practical obligations deriving from Article 11a(1) of the Regulation and further specify the rules regarding the content and the presentation of information to ESMA for the ERP.

319. Recital (1) of the Delegated Regulation provides:

"Article 11a(1) of Regulation (EC) No 1060/2009 requires registered and certified credit rating agencies, when issuing a credit rating or a rating outlook, to submit rating information to the

[307] A CRA infringes Article 11a(1) also by not providing the required information in the required format, however, as the PSI submitted the information in accordance with the obligations related to its format, the Statement of Findings does not focus on this part of the infringement as stated in Point 4a, Annex III, Section II.

European Securities and Markets Authority (ESMA). The requirement does not apply to ratings exclusively produced for and disclosed to investors for a fee. ESMA is required to publish the rating information submitted by the credit rating agencies on a public website called the European rating platform (ERP). Therefore, rules should be laid down regarding the content and the presentation of the information that credit rating agencies should make available to ESMA for the ERP."

320. Recital (3) of the Delegated Regulation provides:

"In order to ensure that the ERP provides up-to-date information on rating actions that are not exclusively disclosed to investors for a fee, it is necessary to describe the data to be reported, including the rating and outlook of the rated instrument or entity, the press releases accompanying rating actions, reports accompanying sovereign rating actions, type of rating action and date and hour of publication. Press releases, in particular, provide information on the key elements underlying the rating decision. The ERP provides rating users with a central access point to up-to-date rating information and lowers information costs by allowing for a global view of the different ratings issued on each rated entity or instrument."

321. In addition to Recital (1) and (3) of the Delegated Regulation, Article 1(2) of the Delegated Regulation provides (emphasis added):

"Credit rating agencies shall ensure the **accuracy, completeness and availability of the data reported to ESMA** and shall ensure that reports are submitted in accordance with Articles 8, 9 and 11 using appropriate systems developed on the basis of technical instructions provided by ESMA".

322. Article 2 of the Delegated Regulation also provides:

"1. A credit rating agency shall report a default in respect of a rating in Fields 6 and 13 of Table 2 of Part 2 of Annex I where one of the following events has occurred:

(a) the rating indicates that a default has occurred according to the credit rating agency's definition of default;

(b) the rating has been withdrawn due to insolvency of the rated entity or due to debt restructuring;

(c) any other instance in which the credit rating agency considers a rated entity or rated instrument as defaulted, materially impaired or equivalent.

2. Where a reported rating is withdrawn, the reason for that shall be reported in Field 11 of Table 2 of Part 2 of Annex I".

323. Article 13(3) of the Delegated Regulation provides (emphasis added):

"**Where a credit rating agency identifies factual errors** in data that have been reported, **it shall correct the relevant data without undue delay** according to the technical instructions provided by ESMA".

324. Therefore, bearing in mind that Article 1(2) of the Delegated Regulation provides that the CRA "shall ensure the accuracy, completeness and availability of **the** data reported to ESMA" (emphasis added), once a rating is updated, corrected, discontinued, removed or withdrawn, the CRA must ensure that the information provided to ESMA is accurate and complete. Hence, the fact that the Delegated Regulation specifies only the cases of default and withdrawal does not lead to the conclusion that only these two actions shall be reported. These two specific cases cannot be understood as the only circumstances in which notification is required. Considering the objectives of the relevant provisions, all changes and updates shall be reported, including discontinuation of the credit rating.

325. Therefore, pursuant to Article 13(3) of the Delegated Regulation, if a CRA is aware that a credit rating has been removed or discontinued, it breaches its obligation if it does not properly inform ESMA about the changes.

326. As to the requirement to correct 'without undue delay' in Article 13(3) of the Delegated Regulation, the case law of the European Court of Justice does not provide extensive guidance. In one of its judgments the Court held that the use of the term 'without undue delay' does not specify exactly the period within which the required action should be taken, and that the expression 'without delay', whilst imposing a requirement to act swiftly, does allow a certain degree of latitude.[308] The term 'without undue delay' should therefore be interpreted on a case-by-case basis, taking into account the specific circumstances of each case.

327. Regarding the interpretation of "without undue delay" in the case at hand, the deadline for reporting credit ratings to ERP should be borne in mind as they give an indication of the timing contemplated by the legislators in order to ensure that reported information remains up-to-date. In particular, Article 8(2) of the Delegated Regulation provides:

"Credit ratings and rating outlooks referred to in paragraph 1, issued between 20:00:00 Central European Time (CET) on one day and 19:59:59 CET on the following day shall be reported until 21:59:59 CET on the following day".

328. Furthermore, Recital (5) of the Delegated Regulation provides:

"In order to ensure that the information on the ERP is up-to-date, rating information should be collected and published on a daily basis to allow for one daily update of the ERP outside Union business hours."

329. The PSI "disputes the conclusion, …, that the scope of Article 11(a) requires S&P to report to ESMA where a premature release is removed since this is not expressed anywhere either in the CRA Regulation or in Commission Delegated Regulation (EU) 2015/2 (the "Delegated Regulation").[309] … In accordance with this role, Article 2 of the Delegated Regulation sets out the circumstances in which a credit rating agency must make a further report to ESMA, namely where there is a default or a withdrawal. Contrary to the assessment in the Statement, these are the only actions which require notification. Neither this provision, nor any other provision in the Delegated Regulation includes any "catch all" language under which it may be reasonably

[308] *Pharos SA v Commission*, Case C-151/98 P, paragraph 25.
[309] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 29.2.

argued that the removal of the Releases requires a further report to ESMA …"[310] Further, the PSI argues that "Article 13(3) of the Delegated Regulation referred to in … the Statement does not require S&P to make a further report to ESMA in relation to the removal of the Releases. This provision requires a credit rating agency to make a further report only where there are "factual errors in data that have been reported", which is not the case in relation to the Releases since S&P provided complete and accurate information about each Release at the point of release."[311]

330. The Board interpretation of the relevant provisions, as explained above, is consistent with the aims of the relevant texts as set out in Recital (31) of 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 and Recital 3 and Article 1(2) of the Delegated Regulation, namely to ensure that the ERP provides up-to-date information on rating actions and that the data reported to ESMA are accurate, complete and available. The interpretation proposed by the PSI of Article 2 of the Delegated Regulation, namely that it sets out the only circumstances in which a CRA must make a further report to ESMA, i.e. where there is a default or a withdrawal, is contrary to the overarching aim of the ERP, which is to provide up-to-date information to the market, and to Article 13(3) of the Delegated Regulation, which provides that errors in data reported to the ERP shall be corrected without undue delay.

331. Therefore, the fact that Article 2 of the Delegated Regulation concerns two specific cases (i.e., default and withdrawal) when the changes need to be reported, does not mean that these are the only instances in which further reporting to the ERP is required; the removal of the credit rating requires a further report to ESMA, in accordance with Article 1(2) of the Delegated Regulation. This interpretation is also consistent with Article 13(3) of the Delegated Regulation which provides that factual errors in data shall be corrected, regardless of the type of the inaccuracy of the information provided (for example, related to the date and hour of publication).

332. As to the assessment of the term 'without undue delay', the PSI considers that "Given that the ERP reporting process detailed above must be followed when submitting and/or making corrections to the ERP, and that this process may require involvement from Compliance, operational and/or technical teams, it is only reasonable to understand that any update cannot be made immediately. On this basis, even if Article 13(3) does apply in the context of the Releases, it cannot be said that there was any delay in terms of correcting the information for any Release other than [Issuer 2]."[312] Further, the PSI said that "pursuant to the GRRG ERP SOP, S&P has developed an automated process to ensure the ratings information is submitted to the ERP in an accurate and timely manner. This involves compiling a daily file consisting of more than 100 data points that are sourced and mapped according to taxonomy provided by ESMA. This process is supported by support teams to ensure daily files are submitted in a timely manner and that any technical issues are addressed. In relation to each of the Releases and the subsequent re-releases, S&P provided information in accordance with the GRRG ERP SOP."[313]

[310] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 29.3.
[311] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 29.4.
[312] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 29.6.
[313] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 29.1.

333. The Board considers that accurate rating information should be published on the ERP without undue delay, and the re-release of the relevant credit ratings should follow the requirements as set out in Article 8(2) of the Delegated Regulation, which are mirrored in the GRRG ERP SOP[314]. Moreover, if the PSI argues that the GRRG ERP SOP is an automated process ensuring that the ratings information submitted to the ERP is accurate and timely and is supported by teams ensuring that daily files are submitted and that any technical issues are addressed, this should ensure that relevant information is submitted to the ERP in a timely manner which complies with the PSI's obligations. Further, the PSI's submission that "[d]ue to the automation of the process [for submitting information to the ERP], it is not always possible to immediately correct or update information once it is being processed by the system"[315] is at odds with the goal of the ERP, namely to display accurate information; this is ensured by the submission of daily files in a timely manner and the addressing of technical issues.

334. The PSI's argument that the process of submitting and/or making corrections may require involvement from, for instance, Compliance and that this implies that any update cannot be made immediately is moot, as Compliance was not involved in the process of submitting the required information to the ERP and the GRRG ERP SOP does not provide for any specific steps to be followed which require the involvement of Compliance[316].

4.3.1.2 Application to the instant case

335. The PSI commits this infringement by not making available the required information to ESMA. This requirement is understood as a broad obligation to ensure the accuracy, completeness and transparency of the data available on the ERP by providing the relevant information (including the date and hour of the rating). The infringement under Point 4a is committed when the PSI does not ensure that the information provided to the ERP is up-to-date. It is notable that in the instant case that the PSI was aware of its error and the discrepancies between data available on the ERP and on other Public Platforms.

336. The Board analysed the facts in the present case regarding the time during which inaccurate information was visible on the ERP. In relation to the [Issuer 2] Securities credit ratings, the PSI identified that the credit ratings should not have been publicly disclosed. However, it still proceeded with the submission of its initial report to ESMA. The credit rating was then removed and was re-released. Subsequently, the PSI submitted its change report to the ERP. As such, although new information was uploaded, for 19 days ESMA had visibility only on the initial reporting.

337. In the instant case, if the PSI decided to remove a credit rating from its platforms and make it unavailable to the public, it should have provided an update to the ERP to fulfil the obligation to ensure the accuracy and completeness of the information on the ERP. According to RADAR, CRAs can submit data to RADAR for the first time and submit updates, corrections or

[314] According to the GRRG ERP SOP, "All ERP 'Action Types' as defined in the BRD (upgrades, downgrades, credit watch etc.) issued between 20:00:00 Central European Time (CET) on the previous day and 19:59:59 CET on the current day must be submitted to the ESMA Hub until 21:59:59 CET on the current day". See also Supervisory Report, Exhibit 196, 'GRRG_ERP_SOP.pdf', 3 January 2016, p. 5.
[315] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 30.4.
[316] Compliance and Legal are only mentioned as intended audience of the document but not as parties which might be involved in the process. See also Supervisory Report, Exhibit 196, 'GRRG_ERP_SOP.pdf', 3 January 2016, p. 4.

cancellations on previously submitted data[317]. Having all these means in place, the PSI wrongly assessed that it was sufficient to submit change reports at the moment of the re-release of the credit ratings, and not at the moment it became aware of the premature disclosures.

338. Regarding the capabilities of the RADAR platform, the PSI states that "the existence of such capabilities does not constitute evidence that S&P was required to report to ESMA the removal of the Releases in the absence of any written requirement in the CRA Regulation or the Delegated Regulation to do so. It is clear that these capabilities have been implemented to allow credit rating agencies to comply with the various reporting requirements detailed in the Delegated Regulation"[318]. While the existence of specific capabilities of RADAR does not as such constitute evidence that the PSI had to report the removal of the credit ratings to ESMA; however, the PSI had to comply with the requirements as already described above and therefore, was required to ensure up-to-date information available on the ERP. The PSI did not do so.

339. Having failed to provide this update, the information on the ERP relating to the date and hour of publication of credit ratings was incorrect for 19 days and the PSI was aware of these inaccuracies. Importantly, the PSI knew about the premature disclosure before the initial report creation and the initial report on the ERP. The information provided to the market remained unchanged on the ERP website until the PSI amended the initial report, while the credit ratings were removed from the PSI's public channels. Therefore, the information on the ERP was not accurate and did not reflect the information available on the Public Platforms where the ratings were not visible. Consequently, there was a discrepancy between the information available on the ERP and on the Public Platforms; this failure to remove information from the ERP led to erroneous information being made available to the market.

340. Finally, any correction must be made without undue delay[319]. Considering that, pursuant to the Delegated Regulation, rating information should be collected and published on a daily basis to allow for one daily update of the ERP outside Union business hours[320], it is clear that the fact that the PSI did not correct the data for 19 days constitutes an infringement of Article 11a(1) of the Regulation; 19 days of inaction is an undue delay.

341. Given the foregoing, by not ensuring that the information provided to the ERP was up-to-date, the PSI failed, when issuing a credit rating or a rating outlook, to submit to ESMA the required rating information in relation to [Issuer 2] Securities. This constitutes the infringement set out at point 4a of Section II of Annex III of the Regulation.

### 4.3.2 Intent or negligence

342. Article 36a(1) of the Regulation provides as follows:

[317] Supervisory Report, Exhibit 195, Credit Ratings Data Reporting (RADAR) System, p. 25-26.
[318] Exhibit 51, Reply to the Initial SoF, 2 August 2022, para. 30.2
[319] Article 13(3) of the Delegated Regulation.
[320] Recital 5 of the Delegated Regulation.

"Where, in accordance with Article 23e(5), ESMA's Board of Supervisors finds that a credit rating agency has, intentionally or negligently, committed one of the infringements listed in Annex III, it shall adopt a decision imposing a fine in accordance with paragraph 2".

"An infringement by a credit rating agency shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that the credit rating agency or its senior management acted deliberately to commit the infringement".

343. In accordance with Article 36a(1) of the Regulation, a finding that an infringement has been committed by a CRA with intention or negligence will lead to the imposition of a fine. Consequently, the Board needs to conclude whether the evidence pertaining to the present case shows that the relevant infringement has been committed by the PSI intentionally or negligently.

344. In accordance with Article 36a(1) of the Regulation, a finding that an infringement has been committed intentionally requires a finding of "objective factors which demonstrate that the credit rating agency or its senior management acted deliberately to commit the infringement".

345. Taking into account the matters set out at Section 4.3.1, the factual background as set out in this Statement of Findings does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

346. It should therefore be assessed whether the PSI acted with negligence.

347. As regards the preliminary remarks regarding negligence, reference is made to the considerations of the Board set out above.

#### 4.3.2.1 Assessment of whether there is negligence in the instant case

348. Regarding the assessment of negligence in the case at hand, the following is of note.

349. The ERP is a key element in ensuring that investors, issuers and other interested parties have access to up-to-date rating information on a central website. The ERP should therefore show accurate information about all relevant credit ratings. The burden to ensure the quality and accuracy of data lies with the CRAs and, as already noted above, the standard of care to be expected of them is high. Therefore, a CRA needs to make data available also to ensure its quality.

350. Moreover, when it becomes aware of any errors or deficiencies, a CRA shall proactively notify ESMA of any such cases.

351. Finally, as noted above, the PSI was aware of its error and the discrepancy between data available to the market on the ERP and on its Public Platforms, and it did not immediately report matters to ESMA.

352. The evidence set out above demonstrates clearly that the PSI failed to show the special care expected from a legal person operating as a CRA in relation to the reporting to the ERP, which in turn underpins a central aim of the Regulation, namely transparency.

353. On the basis of the foregoing, the PSI failed to take the special care expected of a CRA. As a professional firm in the financial services sector subject to stringent regulatory requirements, the PSI is required to take special care in assessing the risks that its acts or omissions entail, and has failed to take that care; and as the result of that failure, it has not foreseen the consequences of its acts or omissions, including particularly its infringement of the Regulation, in circumstances where a CRA in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

354. Therefore, the Board finds that the PSI has been negligent when committing the infringement of Point 4a, Section II, Annex III of the Regulation.

### 4.3.3 Fine

#### 4.3.3.1 Determination of the basic amount

355. Article 36a of the Regulation provides in paragraph 2 as follows:

> "2. The basic amount of the fines referred to in paragraph 1 shall be included within the following limits:
>
> (e) for the infringements referred to in points 2, 3a to 5 of Section II of Annex III, the fines shall amount to at least EUR 25 000 and shall not exceed EUR 75 000; …"
>
> To decide whether the basic amount of the fines should be set at the lower, middle or higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover in the preceding business year of the credit rating agency concerned. The basic amount shall be at the lower end of the limit for credit rating agencies whose annual turnover is below EUR 10 million, the middle of the limit for the credit rating agencies whose annual turnover is between EUR 10 and 50 million and the higher end of the limit for the credit rating agencies whose annual turnover is higher than EUR 50 million".

356. It has been established that the PSI committed the infringement set out at Point 4a of Section II of Annex III of the Regulation regarding the submission of relevant information to ESMA.

357. To determine the basic amount of the fine, the Board has regard to the latest available audited financial statement, indicating the PSI's annual turnover.

358. In 2021, the PSI had a total turnover of EUR 703,424,000[321].

359. Thus, the basic amount of the fine for the PSI for the infringement listed in Point 4a of Section II of Annex III of the Regulation is set at the **higher end** of the limit of the fine set out in Article 36a(2)(a) of the Regulation and shall not exceed EUR 75 000.

[321] S&P Global Ratings Europe Limited Annual Report and Financial Statements for the Financial Year Ended 31 December 2021, pp. 2, 12 and 29.

4.3.3.2 Applicable aggravating factors

360. Based on the evidence in the file, the Board considers that none of the aggravating factors listed in Annex IV of the Regulation are applicable in relation to the infringement set out at Point 4a, Section II, Annex III of the Regulation.

4.3.3.3 Mitigating factors

361. Annex IV of the Regulation lists the mitigating factors to be taken into consideration for the adjustment of the fine. Their application to the instant investigation is assessed below.

Annex IV, Point II. 1. If the infringement relates to a breach listed in Section II or III of Annex III and has been committed for fewer than 10 working days, a coefficient of 0,9 shall apply.

362. This mitigating factor is not applicable; the infringement at Point 4a lasted 19 days, i.e. longer than 10 days.

Annex IV, Point II. 2. If the credit rating agency's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.

363. In this regard, the PSI indicated that "S&P assigns credit ratings of debt issuances by following specific processes - either through the RPM process or via the NID. These processes are subject to formal governance, which has senior management oversight, and are designed to ensure compliance with S&P's regulatory obligations."[322]

364. However, this is not sufficient to evidence that that the PSI's senior management has taken all the necessary measures to prevent the infringement. More generally, there is no evidence in the file that the PSI's senior management has taken all the necessary measures to prevent the infringement of Point 4a of Section II of Annex III of the Regulation committed by the PSI concerning the reporting to ESMA.

365. Therefore, the Board deems that this mitigating factor is not applicable.

Annex IV, Point II. 3. If the credit rating agency has brought quickly, effectively and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply.

366. The PSI has not brought "quickly, effectively and completely the infringement to ESMA's attention". Indeed, this infringement was discovered through the investigation carried out by ESMA Supervisors.

367. Therefore, the Board deems that this mitigating factor is not applicable.

Annex IV, Point II. 4. If the credit rating agency has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

368. The PSI claimed that "since January 2022, notification to the ERP support team has been required where changes to credit rating publications are made. Where the ERP support team

[322] Exhibit 4, PSI's Response to the IIO's RFI, 23 March 2022, Question 40, p. 20.

determines that an update should be made, it will generate a correction file outside of the daily process."

369. However, the PSI has not provided evidence in support of this assertion. The only document available in the file which relates to the procedure of submission of information to the ERP is the GRRG ERP SOP[323] which was updated a few years ago. This document does not set out the amendments to which the PSI referred.

370. Therefore, the Board deems that this mitigating factor is not applicable.

#### 4.3.3.4 Determination of the adjusted fine

371. In accordance with Article 36a(3) of the Regulation, the basic amount of EUR 75,000 must be adjusted taking into account the applicable aggravating and mitigating factors.

372. As there are no applicable aggravating or mitigating factors, the amount of the fine to be imposed on the PSI for the ERP infringement amounts to EUR 75,000.

### 4.3.4 Supervisory measures

373. Regard must be had to paragraphs 1 and 2 of Article 24, of the Regulation.

374. Given the factual findings in the case at hand, only the supervisory measure set out in Article 24(1)(e) of the Regulation may be considered appropriate with regard to the nature and the seriousness of the infringement.

375. It must thus be held that a public notice is to be issued.

[323] Supervisory Report, Exhibit 196, GRRG_ERP_SOP.pdf, 3 January 2016.

**On the basis of the above Statement of Findings, the Board hereby**

**DECIDES**

**that**

S&P Global Ratings Europe Limited committed with negligence the following infringements:

- infringement set out at Point 12 of Section I of Annex III of the Regulation concerning internal control mechanisms, by not having internal control mechanisms adequate to ensure compliance with its obligations regarding the timely disclosure of credit ratings.

- infringement set out at Point 5 of Section III of Annex III of the Regulation concerning the discontinuation of credit ratings, by failing to disclose on a non-selective basis and in a timely manner six decisions to discontinue a credit rating.

- infringement set out at Point 4a of Section II of Annex III of the Regulation concerning the provision of information to ESMA in the required format, by not submitting to ESMA the required information and specifically by not ensuring that the information provided to the European Rating Platform was up-to-date.

**therefore**

**IMPOSES**

the following **fines**:

- EUR 825,000 for the infringement set out at Point 12 of Section I of Annex III of the Regulation concerning internal control mechanisms, by not having internal control mechanisms adequate to ensure compliance with its obligations regarding the timely disclosure of credit ratings.

- EUR 210,000 for the infringement set out at Point 5 of Section III of Annex III of the Regulation concerning the discontinuation of credit ratings, by failing to disclose on a non-selective basis and in a timely manner six decisions to discontinue a credit rating.

- EUR 75,000 for the infringement set out at Point 4a of Section II of Annex III of the Regulation concerning the provision of information to ESMA in the required format, by not submitting to ESMA the required information. Specifically, the PSI did not ensure that the information provided to the European Rating Platform was up-to-date.

for the overall amount of **EUR 1,110,000**

**and**

**ADOPTS**

a **supervisory measure** in the form of a **public notice** to be issued in respect of the infringements.

S&P Global Ratings Europe Limited may avail itself of the remedies of Chapter V of Regulation (EU) No 1095/2010 against this decision.

This decision is addressed to S&P Global Ratings Europe Limited – Fourth Floor, Waterways House, Grand Canal Quay, Dublin 2, Ireland. Company number: 611431.

Done at Paris, on 22 March 2023

[signed]

For the Board of Supervisors

The Chair

Verena Ross