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Additional Information

Level 1 Regulation

Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic

CRA Regulation

Subject Matter

Article 6a – Investments in credit rating agencies (ESMA33-5-87 Q&A 4)

Question

(a) Could a non-EU CRA have a stake higher than 5% in a CRA registered in the EU and vice versa?

(b) Could an EU registered CRA acquire another EU registered CRA?

(c) For the purposes of Article 6a of the CRA Regulation, the term “shareholder” includes beneficial owners as defined in Article 3(6) of Directive 2005/60/EC (Money Laundering and Terrorist Financing Directive). Are collective portfolio managers considered as shareholders for the purpose of Article 6a of the Regulation?

(d) Should portfolio managers be considered as shareholders under the last paragraph of Article 6a(1) as subjects in a position to exercise significant influence on the business activities of collective investment schemes?

ESMA Answer

17-07-2023

Original language

(a) Article 6a of the CRA Regulation does not differentiate between EU and non-EU CRAs shareholders or members of a credit rating agency. Consequently, Article 6a of the CRA Regulation applies to any CRA shareholder or member of a credit rating agency registered in the EU holding 5% or more of the capital or the voting rights of another CRA registered in the EU regardless of where the shareholder is located. As a result, a non EU CRA or a shareholder can hold 5% or more of the capital or the voting rights in a CRA registered in the EU provided that they do not hold 5% or more of the capital or the voting rights in any other CRA registered in the EU. This rule also applies in case of indirect shareholding, where an EU or non-EU person or entity holds 5% or more of the capital or the voting rights of a company which has the power to exercise control or a dominant influence over a credit rating agency registered in the EU.

(b) Article 6a(2) of the CRA Regulation excludes from the prohibition of holding 5% or more of the capital or the voting right of any other credit rating agency those investments in other credit rating agencies belonging to the same group of credit rating agencies. Consequently, a take-over of an EU registered CRA should be allowed when, as a consequence of the

corporate action, the targeted EU-registered CRA will belong to the same group of the acquiring EU registered CRA.

(c) ESMA considers that a collective portfolio manager should be considered a shareholder when according to the applicable national legislation (based on the relevant EU legislation) the portfolio manager is considered as a shareholder.

(d) The last paragraph of Article 6a(1) allows shareholders with 5% or more capital or voting rights in one CRA registered in the EU to have at the same time holdings in collective investment schemes which invest 5% or more in any other CRA. However, an exception to such rule is provided at the end of the last paragraph of Article 6a(1) when a shareholder with 5% or more capital or voting rights in one CRA registered in the EU has also holdings in a collective investment scheme that puts him or her in a position to exercise significant influence on the business activities of such a scheme. The last paragraph of Article 6a(1) does not refer to portfolio managers of such schemes provided that they are not considered shareholders as explained in sub question (c) of question 4.