

Submission Date

17/07/2023

ESMA_QA_1467

Status: Answer Published

Additional Information

Level 1 Regulation

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

Topic

CRA Regulation

Subject Matter

Annex I, Section B – Operational requirements: Identification of relevant shareholders (ESMA33-5-87 Q&A 5)

Question

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

ESMA Answer

17-07-2023

Original language

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

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

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