

**RESPONSE FROM THE ADVISORY COMMITTEE OF THE CNMV TO THE
CONSULTATION PAPER: ESMA GUIDELINES ON THE APPLICATION OF THE
ENDORSEMENT REGIME UNDER ARTICLE 4(3) OF THE CREDIT RATING
REGULATION 1060/2009**

The CNMV's Advisory Board (or Committee) has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV.

ESMA has issued a consultation paper on the application of the endorsement regime under article 4(3), referring specifically to the interpretation of the requirement that:

*“the credit rating agency has verified and is able to demonstrate on an ongoing basis to the competent authority of the home Member State that the conduct of credit rating activities by the third-country credit rating agency resulting in the issuing of the credit rating to be endorsed fulfils requirements which are **at least as stringent** as the requirements set out in Articles 6 to 12”.*

According to the ESMA Consultation Paper, compliance with this requirement means that ratings issued by agencies registered and authorised in the EU but prepared by their offices located outside the EU may only be "endorsed" (and, therefore, use for regulatory purposes) if the third country's law or regulation establishes requirements similar to those of the EU, which in any event must include rules on authorisation, registration and supervision (sections 6 and 7 of article 4).

This interpretation would require that the corresponding jurisdiction be recognised as being "equivalent" to European jurisdiction by the EC.

Therefore, the ESMA opposes the idea of endorsement being based on self regulation without the supervision of the third country's competent authority.

The consultation paper poses a single question:

Q1: Please comment on the content of the “Guidelines on the application of the endorsement regime under Article 4.3” attached to this Consultation Paper (Annex I), by considering also the attached Cost-Benefit Analysis (Annex II).

The direct conclusion from this endorsement regime is that ratings issued by international agencies from any of their offices outside the EU may only be used for regulatory purposes by European financial institutions if the third country in question has legislation governing rating agencies that is equivalent to the European legislation from June 2011 onwards.

Under this interpretation, the "endorsement" regime becomes one of "equivalence", i.e. far exceeding the effect that was sought initially by establishing this regime, whose purpose was precisely to ensure that ratings issued by the largest credit rating agencies could continue to be used in the EU. However, another interpretation is possible which would fulfil the goal pursued by the regulation: that the rating agencies assume the responsibility for the application of the requirements established by the EU, regardless of where the analyst is located. This solution would make it possible to maintain high quality ratings in the EU while avoiding unnecessary duplication of ratings issued by the same agency.

The ESMA interpretation would lead directly to an increase in the cost of ratings due to the need for duplication, or it would mean that ratings issued outside the EU would not be valid for regulatory purposes, which would impact European institutions' capital requirements and, ultimately, financial stability.

To date, only Japan has been recognised as being equivalent to Europe, and the Commission is expected to issue a decision in the near future as to whether US jurisdiction is equivalent. Nevertheless, not many more jurisdictions are expected to be recognised as equivalent.

In the consultation paper, the ESMA includes an "Impact assessment" section listing 20 jurisdictions from which ratings are issued and an evaluation of the impact of this interpretation which acknowledges that the cost for financial institutions will be high.

Conclusion

Rather than the interpretation suggested by the ESMA, the Advisory Committee considers it would be more appropriate to adopt the interpretation defended by some supervisors under which it would be possible to use ratings issued outside the EU for regulatory purposes provided that, in issuing the rating, the issuing agency applied standards similar to those in Europe, regardless of the regulations that prevail in the country where the analyst is located and without the need for the ESMA to recognise that jurisdiction as equivalent.