

Porto Salvo, 14 October 2011

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Our Ref.: GE-EST INST CORP/LM/019/2011

Subject: ESMA issues first drafts of binding standards for credit rating agencies - Public Consultation

Dear Sirs,

ESMA, which in Portugal is represented by CMVM, launched a Public Consultation on proposed future Regulatory Technical Standards (RTS) on Credit Rating Agencies (CRAs) asking for comments by the deadline of 21 October 2011. Please find below the comments of Banco Comercial Português (BCP) regarding the Questions presented in the Consultation Papers.

ESMA Consultation Paper: Regulatory technical standards on the assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009

Question 1: Do you agree with the list of requirements set out in the attached draft RTS to assess whether a credit rating methodology is rigorous?

BCP agrees with the list of requirements set out in the attached RTS, being important that Rating Agencies incorporate into its analysis all the factors relevant in determining creditworthiness (sufficient information, of sufficient quality and reliable sources) and that its analysis is robust (both supported by statistical and/or historical evidence). Also their analytical models should be based on reliable credit rating assumptions.

However, BCP suggests that the RTS should also include provisions in order to limit Rating Agencies' discretionarity in the use of its methods of analysis. Rating Agencies make frequently adjustments to the Ratings resulting from its scorecards based on subjective considerations regarding a rated entity. BCP understands that a credit rating reflects a Rating Agency opinion on a rated entity or instrument but Rating Agencies have broad scope for discretionarity.

It is often observed that Rating Agencies (over) react to market conditions (namely CDS fluctuations) instead of relying on rigorous evaluation of creditworthiness. RTS should have provisions in order to limit this action without prejudicing the responsiveness of credit ratings to changes in market conditions.

Question 2: Are there any other requirements that should be considered in the assessment of whether credit rating methodologies are systematically applied?

BCP considers that methodologies used must be capable of promptly incorporating the findings from any review of its appropriateness. Besides, it is necessary that Rating Agencies make evidence that credit rating methodologies are consistently applied across different

market sectors and companies. Rating Agencies should make evidence, through statistical analysis comparing the Ratings assigned across the EU and across each sector, that credit rating methodologies are systematically applied, in order to exclude differentiation factors in Ratings based upon other (non identified) factors.

Question 3: Do you agree with the list of requirements set out in Article 5 defining whether credit rating methodologies are continuous?

The application of credit rating methodologies should be responsive to market changes (without overreaction) and should be continually applied unless they are discontinued. The adoption of a new rating methodology should be preceded by an extensive information to the market, namely to the rated entities. It should also ensure a period of consultation in order to receive commentaries from market players and rated entities.

Question 4: Do you consider that these requirements would help ESMA in complying with its obligations set out in Article 22a?

BCP agrees that Rating Agencies' methodologies are to be subject to stress test in order to assess, essentially, its predictive power and its robustness and also that credit rating anomalies are identified and appropriately addressed

Question 5: Should other costs or benefits be considered when assessing the impact assessment of the draft RTS?

We agree with the costs and benefits identified and related to the assessment of the draft RTS.

ESMA Consultation Paper: Regulatory technical standards on the information to be provided to ESMA by a credit rating agency in its application for registration and certification and for the assessment of its systemic importance

Q1: Would you agree that the content of the Programme of operations set out in Annex X of the draft RTS is appropriate? If not, please, indicate the reasons or provide ESMA with further elements which could be included in the Annex.

BCP does not have comments on Q1.

Q2: Would you agree that the CRAs provide the criminal records of its senior management as set out in Article 15.2 of the draft RTS?

Yes. BCP agrees with the obligation of the CRAs to provide the criminal records of its senior management as set out in Article 15.2 of the draft RTS. This obligation will tend to guarantee the trustiness of the senior management.

Q3: Would you agree with the content of the self-declaration that the senior management has to sign as set out in Annex VI of the draft RTS?

Yes. BCP agrees with the content of the self-declaration that the senior management has to sign as set out in Annex VI of the draft RTS.

Q4: Would you agree that the CRAs provide a copy of the outsourcing agreements instead of a description of its content?

Yes. It will increase the information provide to ESMA which is always better.

Q5: Would you agree with the level of detail regarding the information on the activities of the owners of the CRA described in Annex III of the draft RTS?

Yes. BCP considers sufficient the level of detail requested to the CRA. The Annex III permits a correct identification of owners, respective percentage of capital held, percentage of voting rights, nature of the holding, business activity, interests. It is important to guarantee that the CRA opinions aren't influenced by owners' interests in other businesses or sectors.

Q6: Would you agree with the proposed content of the inventory of conflicts of interest?

Yes. BCP agrees with the proposed content of the inventory of conflicts of interest. However, because it is a critical item, ESMA should try also to evaluate the potential conflict of interest based on other information besides that provided by the CRA, including information released to the market (public information).

Q7: Would you agree that the content of the Programme of operations set out in Annex IX of the draft RTS is appropriate? If not, please, indicate the reasons or provide ESMA

Yes. BCP agrees that the content of the Programme of operations set out in Annex IX of the draft RTS is appropriate.

Q8: Would you agree that the statistics concerning the remuneration of employees are simplified?

No. BCP considers that the information requested about employees' remuneration is not sufficient (fixed and variable remuneration). It should also be included information regarding the remuneration policies (criteria for the variable remuneration).

ESMA Consultation Paper: ESMA's draft Regulatory Technical Standards on the presentation of the information that credit rating agencies shall disclose in accordance with Article 11(2) and point 1 of Part II of Section E of Annex I to Regulation (EC) No 1060/2009

BCP has no specific comments.

ESMA Consultation Paper: ESMA's Draft Regulatory Technical Standards on the content and format of ratings data periodic reporting to be submitted from credit rating agencies

BCP has no specific comments.

Yours sincerely

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