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- Your Ref: Comment letter on Consultation Paper on 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

Dear Sir.

Thank you for giving us the opportunity to comment on your Consultation Paper concerning 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.

I agree with your proposed regulatory technical standards (RTS), and strongly support the changes therein as necessary and sufficient, compared with the existing guidance under CESR/Ref. 10-347 (Guidance). Given the importance of credit rating agencies (CRAs) in financial markets, and the reliance that investors and other parties place upon their ratings, it is important that regulators should place more emphasis on the fitness and appropriateness of CRAs' senior management and other key officers, their lines of responsibility, and on their monitoring, managing and mitigating conflicts of interest, in order to reduce the possibility of disruptive or abusive behaviour, manipulation and other deceptive, misleading or fraudulent activities. This is critical in order to improve confidence in the veracity and integrity of CRAs, and public perception in the integrity of the ratings process. From the public point of view, it is very important that the ratings process is both perceived and seen to be independent and objective. I will first make some general comments on conflicts of interest, and then answer some more detailed questions.

Conflicts of interest

A conflict of interest can arise when the CRA's obligation to act in the best interest of its client / customer conflicts with any of:

- the CRA's own interest
- an interest of the rated entity
- the interests of third parties including other clients / customers

Effective rules on conflicts of interest are critical, and these must include a general principle that CRAs must ensure that their ability to provide objective service is not, and cannot be perceived to be compromised. It is the CRA's responsibility to ensure that it is aware of any existing or potential conflicts of interest, and that these are disclosed up-front and clearly documented, and that the CRA should disqualify itself from acting in the particular case, if necessary. Such rules and principle must apply to all CRAs.

Answers to specific questions raised by ESMA

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

Absolutely, yes. Senior management should have "nothing to hide" here.

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?

Generally, yes. It should be clear that such self-declaration should cover corresponding convictions, injunctions and orders of foreign courts (jurisdiction outside of the "country of origin of the relevant person",¹ and also outside of the EU for example). After all, bad character and dishonesty do not respect borders.

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

Yes. It should be stressed that outsourced activities are an integral part of the scope of the internal control system, and that in no case does outsourcing diminish the responsibility of the CRA.

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. This should enable ESMA to assess whether any conflicts of interest arising from the activities and interests of the CRA's owners might affect the independence of the CRA.

¹ Quoted in Paragraph 15.2(a) of the proposed RTS.

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

In general yes. In order to manage expectations here, we should be aware that this would be primarily a retrospective inventory of existing conflicts of interest, rather than a prospective view of potential conflicts of interest. In reality it is quite difficult for an entity to understand potential conflicts of interest in the context of its activities, and we assume that conflicts of interest normally arise in an ad hoc and unplanned manner.

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

Yes, they are certainly simplified compared with the more granular requirements of Paragraph 215.b of the Guidance.

Yours faithfully

C.R.B.

Chris Barnard