

## PUBLIC NOTICE

Moody's Deutschland GmbH ('Moody's Germany') and Moody's Investors Service Limited ('Moody's UK') are credit rating agencies ('CRAs') registered in the European Union (EU) and are part of a group of credit rating agencies in the Moody's Group which is active in the EU.

Regulation (EC) No 1060/2009 on credit rating agencies ('the Regulation') lays down obligations for CRAs in the conduct of their activities. In conjunction with its role as supervisor of CRAs under the Regulation, ESMA has functions and powers to take enforcement action in relation to infringements of the Regulation by CRAs.

Against that background, in June 2016, the CRA supervisors in ESMA formed the view that there were serious indications of possible infringements of the Regulation by Moody's Germany and Moody's UK in regard to their public announcement of certain ratings and the public disclosure of methodologies used to determine those ratings. This concerned specifically the ratings issued between June 2011 and mid-December 2013 for multilateral development banks such as the European Investment Bank as well as other supranational entities such as the EU.

The matter was then referred to an independent investigating officer ('IIO') who, having conducted an investigation, submitted her findings to ESMA's Board of Supervisors ('the Board').

Having considered the evidence, the Board has found that Moody's Germany and Moody's UK negligently committed the following infringements of the Regulation.

### **Infringement concerning the presentation of ratings**

#### **A) Relevant legislation**

Article 10(2) of the Regulation obliges credit rating agencies to ensure that their credit ratings are presented and processed in accordance with specific requirements set out in Section D of Annex I to the Regulation. Amongst those requirements, point 2(b) of Part I of Section D of Annex I to the Regulation states that a "*credit rating agency shall ensure that at least ... the principal methodology or version of methodology that was used in determining the rating is clearly indicated, with a reference to its comprehensive description*".

Therefore, in its announcement presenting a rating to the public, a CRA must fulfil two obligations. It must (a) clearly indicate the principal methodology or version of methodology used in determining the rating, and (b) provide a reference to a comprehensive description of the methodology concerned. The requirement to comply with each of these two obligations is referred to as the **'Ratings Presentation Requirement'**.

Non-compliance with the Ratings Presentation Requirement is an infringement – hereinafter **'Ratings Presentation Infringement'** – under Annex III, III (6) of the Regulation.

## **B) Factual findings and analysis of the Board**

Between 1 June 2011 and 16 December 2013, Moody's Germany and Moody's UK issued a combined total of nineteen ratings of nine entities described collectively by Moody's as supranational entities (**'Relevant Ratings'**). Moody's Germany issued sixteen of these ratings, Moody's UK the other three.

The nine rated entities were the European Investment Bank, the European Investment Fund, the European Financial Stability Facility, the European Stability Mechanism, the Council of Europe Development Bank, East African Development Bank, European Company for the Financing of Railroad Rolling Stock, European Atomic Energy Community, and the EU.

The public announcement of each of the Relevant Ratings included a press release. As there were no other material sources of public information, these various press releases fell to be considered in order to determine whether the Ratings Presentation Infringement was committed in connection with any of the ratings comprising the Relevant Ratings.

The Board found that no clear signal of a principal methodology or version of methodology was provided in any of the press releases. It was not even clear from the press releases whether there was just one, or more than one, methodology used in each instance.

The Board further concluded that the press releases did not include the necessary reference to the comprehensive description of the methodology, principal methodology or version of methodology used to determine each of the ratings concerned. The Board found that the press releases themselves did not include a comprehensive description of the methodologies concerned.

## **C) Findings of infringement**

The Board therefore found that Moody's Germany and Moody's UK committed the Ratings Presentation Infringement with respect to the Relevant Ratings published. Moody's Germany did so sixteen times, while Moody's UK was found to have done so three times.

Furthermore, the Board found that the two CRAs each committed this infringement negligently and were therefore liable to fines. In calculating their respective fines, the Board took into account the aggravating factor that Moody's Germany committed the infringement in sixteen instances and Moody's UK did so in three instances. The Board also took into account the mitigating factor that measures had been voluntarily taken to ensure no similar infringement in the future. Thus the Board has fined Moody's Germany EUR 420 000 and Moody's UK EUR 160 000.

## **Infringement concerning disclosure of methodologies**

### **A) Relevant legislation**

Article 8(1) of the Regulation requires a CRA to disclose to the public the methodologies it uses in its credit rating activities (the '**Methodology Disclosure Requirement**').

Failure to do so is an infringement – '**the Methodology Disclosure Infringement**' – under Annex III, III (3) of the Regulation.

In deciding whether the Methodology Disclosure Infringement has been committed, ESMA examines the scope, location and timing of the material disclosures. More particularly, the Methodology Disclosure Requirement under Article 8(1) of the Regulation is to be understood as a requirement for full disclosure of methodologies used in credit rating activities, and for such disclosure to be made, where possible, separately from and prior to the public announcement of ratings which have been determined using those methodologies.

### **B) Factual findings and analysis of the Board**

As set out above, between 1 June 2011 and 16 December 2013, Moody's Germany and Moody's UK issued a combined total of nineteen ratings of nine entities described collectively by Moody's as supranational entities ('**the Relevant Ratings**'). Moody's Germany issued sixteen of these ratings, Moody's UK the other three.

The methodology used in each of the nineteen ratings was not the subject of any separate prior public disclosure. Moreover, the Board was satisfied that none of the press releases in respect of the Relevant Ratings made full disclosure of the methodology used in each instance.

### **C) Findings of infringement**

The Board therefore found that Moody's Germany and Moody's UK committed the Methodology Disclosure Infringement with respect to the Relevant Ratings published.

Moreover, the Board found that the two CRAs committed this infringement negligently and were therefore liable to fines. In calculating their respective fines, the Board took into account the aggravating factor that both CRAs committed the infringement for more than six months. The Board also took into account the mitigating factor that measures had been voluntarily taken to ensure no similar infringement in the future. Thus, the Board fined Moody's Germany and Moody's UK EUR 330 000 each.

### **Supervisory measure and fine**

#### **Public notice**

Pursuant to Article 24 of the Regulation, the Board concluded that the relevant infringements also warranted a supervisory measure in the form of the publication of this public notice.

#### **Fine**

The overall fine imposed on Moody's Germany is EUR 750 000 and on Moody's UK is EUR 490 000.