

ESMA

European Securities Market Authority

REGULATORY TECHNICAL STANDARDS PERTAINING TO CREDIT RATING AGENCIES

ESMA CONSULTATION 2011/302

ESMA CONSULTATION 2011/303

ESMA CONSULTATION 2011/304

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NYSE EURONEXT'S RESPONSE TO THE CONSULTATIONS

October 21, 2011

This document contains the views of NYSE Euronext with regard to the following four (4) ongoing consultations related to **Regulatory Technical Standards** (hereafter "**RTS**") pertaining to Credit Rating Agencies (hereafter "ESMA's CRAs Consultations"):

- The "Consultation on RTS 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" (hereafter "Consultation no.1");
- The "Consultation on RTS on the **assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009**" (hereafter "Consultation no.2");
- The "Consultation on ESMA's draft RTS 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*" (hereafter "Consultation no.3"); and
- The "Consultation on ESMA's draft RTS on the **content and format of ratings data periodic reporting** to be submitted from credit rating agencies" (hereafter "Consultation no.4").

NYSE Euronext welcomes the opportunity to comment on the proposed draft Regulatory Technical Standards applying to Credit Rating Agencies (hereafter "CRAs"). NYSE Euronext closely follows all European Regulatory and Legislative developments. It is therefore in this context that NYSE Euronext is providing comments to the present Consultations.

I. BACKGROUND AND GENERAL COMMENTS BY NYSE EURONEXT

NYSE Euronext agrees in principle that the aim of the proposed Regulatory Technical Standards applicable to CRAs should indeed ensure a high level of investor and consumer confidence in the internal markets.

NYSE Euronext understands that the EC expressed the need¹ for a stronger regulated supervision of CRAs by way of assigning to ESMA, amongst other, the tasks of monitoring and supervising CRAs. In the new Regulation on Credit Rating Agencies² and its amendments³, in force since July 2011, the EC indicated that ESMA should execute exclusive supervisory powers over CRAs and have appropriate powers of investigation and enforcement as specified in the relevant legislation.

The new existing CRAs Regulation also gives ESMA the responsibility for their registration. The supervisory powers also include the power to request information and conduct inspections and investigations. In particular, ESMA is empowered to conduct unannounced checks (“dawn raids”) at the premises of a CRA, impose fines and ensure that agencies evaluate the accuracy of their past ratings. Under the new rules, ESMA will also have a number of other supervisory powers in cases of breach of the CRA Regulation, ranging from the temporary prohibition of issuing credit ratings to the withdrawal of the registration altogether⁴.

II. SPECIFIC COMMENTS BY NYSE EURONEXT ON ESMA’S CRAs CONSULTATIONS

NYSE Euronext welcomes the proposed Regulatory Technical Standards pertaining to CRAs and has the following general comments on each of the four Consultations.

1) **CONSULTATION no.1** (2011/302)

NYSE Euronext understands that ESMA has conducted a full impact assessment with regard to the Registration of CRA. NYSE Euronext supports ESMA’s proposition addressing the weakness of the CESR Guidelines in the drafting the new RTS⁵. The full impact assessment conducted by the EU in 2008 identified lacks in (1) Conflicts of interest, (2) in the quality of methodologies and ratings and (3) an unlevel playing field in transparency requirements. Moreover, given the global nature of CRAs activity, a more centralized oversight leads to streamlined decision-making and public oversight without the risks of supervisory gaps.

¹ The new CRAs Regulation follows a series of observations by market participants which include, amongst others, the following: European Parliament, press release, “EU watchdog placed at the heart of credit rating agency supervision”, 15 December 2010 and the consolidated text (provisional edition, (2010)0478) (the “CRA Amending Regulation”), the IOSCO’s Code and the role of credit rating agencies in structured finance, update to the code of conduct, May 2008, U.S. SEC (U.S. Securities and Exchange Commission), *Summary Report of Issues Identified in the Commission Staff’s Examinations of Select Credit Rating Agencies*, Washington, DC, 2008; and FER (Financial Economists Roundtable), *Reforming the Role of the Statistical Ratings Organizations in the Securitization Process*, Statement released the 1st December 2008, Philadelphia.

² Regulation (EC) No 1060/2009 on credit rating agencies (CRA Regulation).

³ Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EC) No 1060/2009 on credit rating agencies, COM (2010) 289 final, 2 June 2010, which reiterated that the European Parliament (EP) and the Council should consider ESMA to have adequate supervisory powers over CRAs.

⁴ See Art 24 of the CRAs Regulation.

⁵ NYSE Euronext also understands that ESMA has identified two options including (1) the “baseline policy option” - Using the existing CESR Guidance for CRAs of June 2010 or (2) the “fine tuning” option – addressing the weakness of the CESR Guidelines when drafting new RTS. ESMA proposes the “fine tuning” option no.2.

NYSE Euronext believes that Option no.2 offers the following advantages: (1) It harmonises certain inconsistencies and proposes a form for basic information and a programme of operation; (2) it reduces the time of registration/certification; (3) it increases the level of compliance and (4) it enhances investor protection.

2) CONSULTATION no.2 (2011/303)

NYSE Euronext understands that the actual assessment of compliance of CRAS methodologies must respect the requirements of Article 8(3) of the CRAs Regulation⁶. NYSE Euronext supports ESMA's proposed RTS which aim at ensuring that credit rating methodologies properly reflect changing markets conditions ensuring transparency and disclosure. ESMA proposes to put in place back testing obligations by verifying execution of back-testing by CRAs, analysing the results of back-testing and verifying that CRAs have processes to take into account the results of the back testing in their methodologies.

NYSE Euronext supports ESMA's proposition and adds that these definitions have to be developed in collaboration with the industry and the impact of costs has to be taken into account.

3) CONSULTATION no. 3 (2011/304)

NYSE Euronext understands that CRAs need to report to a central repository (CEREP) run by ESMA which went live on July 1, 2011. CEREP calculates performances/rating statistics and discloses them to the public. ESMA identified 2 weaknesses: (1) participant's claim of lack of transparency on some historical performance data and (2) data was not always complete and CRAs differed in their approach in collecting and presenting data.

NYSE Euronext supports ESMA's proposition to develop RTS relating to CEREP. This is surely the best way to increase investors' trust by standardised key metrics and increasing transparency. NYSE Euronext believes that the level of detail is appropriate and that they cover relevant items.

4) CONSULTATION no. 4 (2011/305)

NYSE Euronext agrees with ESMA that there is indeed a necessity to put in place RTS on periodic reporting in order for ESMA to use the data as a basis for supervisory reviews before undertaking any investigatory or supervisory actions. ESMA has formulated two different options for the context and format of the rating data to be reported on a monthly basis: (1) Option 1: analytical data on individual rating actions; and (2) Option 2: aggregate data on ratings.

NYSE Euronext supports ESMA's proposition to impose Option 1 to require "analytical data on individual rating actions" as it deems it more appropriate to materially improve the effectiveness of supervision. NYSE Euronext believes that Option 1 would convey more precise indications to ESMA on how and when to exert more invasive powers in order to investigate and/or review critical issues identified.

NYSE Euronext has no additional comments.

⁶ Article 8(3) states the following: "A CRA shall use rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing."